UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1049
8 April 1991

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE 1049th MEETING

Held at Headquarters, New York,
on Wednesday, 3 April 1991, at 10 a.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of the United Kingdom (continued) (CCPR/C/58/Add.6, Add.11 and Add.12)

1. At the invitation of the Chairman, Mrs. Evans, Mr. Halliday and Mr. Stock (United Kingdom) took places at the Committee table.

2. The CHAIRMAN invited the Committee to resume its questioning of the United Kingdom delegation in connection with sections VI, VII and VIII of the list of issues.

3. Mr. WENNERGREN, referring to article 7 of the Covenant, asked what measures existed in the United Kingdom to give effect to the right of everyone not to be subjected to medical or scientific experiment without his free consent.

4. Turning to paragraph 33 of the supplementary report (CCPR/C/58/Add.12), he said that he understood that the period between the half-way point of a prison sentence of more than four years and its two-thirds point, at which the inmate would automatically be released on parole, appeared to be a period of discretionary power of the Parole Board. He wondered whether guidelines were envisaged for the use of that discretionary power.

5. The provision, described in paragraph 34, whereby release could be delayed by additional days to be served for misconduct, also appeared to grant discretionary power to the Parole Board.

6. It appeared that the prisoner was not regarded as a party to the question of when he or she should be granted parole, and he wondered if that entailed any incompatibility with article 16 of the Covenant, which stipulated that everyone shall have the right to recognition everywhere as a person before the law.

7. Turning to the question of life sentences, he understood that it was customary for the trial judge to write to the Home Secretary, recommending a tariff period which life prisoners should serve. It was disturbing that the procedure was not an open one, that it was not possible for the prisoner to know what the tariff period was, and that there was no appeal against it. The United Kingdom Government had stated that if a discretionary life prisoner was refused parole after the tariff period, he or she would be allowed a hearing at which the reasons for the refusal would be disclosed. However, prisoners did not know how long the tariff period was. It seemed that prisoners were not being treated as persons before the law. He asked whether the Criminal Justice Bill would include any provisions on such a hearing.

/...

8. Mr. MYULLERSON had questions on incommunicado detention under the Prevention of Terrorism (Temporary Provisions) Act of 1989. Paragraph 115 of the third periodic report spoke of the statutory right of a detainee to have someone notified of their arrest and whereabouts and to have access to legal advice, while paragraph 112 referred to the duty of the police officer reviewing the detention to consider the need to withhold the right of the detained person to have someone informed of his arrest and to see a solicitor. He would be grateful for clarification of that apparent contradiction. He also wished to know at what point in time a person under arrest had access to a lawyer.

9. Referring to paragraph 125 of the report, he recalled that it had been explained the preceding day that compensation would be paid if arrest or detention were unlawful under the law of the United Kingdom, but not if it was unlawful under the Covenant. He asked whether that was not a violation of article 9 of the Covenant, which considered the lawfulness of an arrest not only in terms of domestic law but also in terms of rules laid down in the Covenant itself.

10. On the issue of secure accommodation, he noted that paragraph 148 of the report stated that it was part of the child-care system, not the penal system. However, "convicted youngsters" were apparently not segregated from other children requiring secure accommodation. He asked if the fact that convicted young persons were placed in secure accommodation did not in effect make such accommodation part of the penal system. He also wished to know what kind of behaviour caused a child to be sent to such accommodation and what role the parents had in the decision to commit a child to secure accommodation.

11. Mr. MAVROMMATIS noted the statement in paragraph 114 (a) of the report that in cases involving "scheduled" offences that were tried without a jury there were compensating safeguards in the form of a requirement for a written judgement and an automatic right of appeal. However, it was his understanding that those two safeguards existed in the event of any and all jury trials. He had concerns that, as explained in paragraph 114 (c), the initial onus of proof in scheduled cases was reversed, which might have an effect on the presumption of innocence. He assumed that "prescribed articles" referred to explosives and firearms, but warned that the necessity of proving intent was being abandoned. With regard to paragraph 114 (d), he asked whether the exclusion of confession evidence obtained as a result of torture or inhuman or degrading treatment extended also to confessions obtained by threats or promises, and also whether there was a difference between scheduled and ordinary offences in that regard.

12. He asked under what circumstances written statements would be allowed and whether there was any way of testing the evidential value of such statements.

13. Referring to paragraph 114 (g), he asked what the maximum punishment was for membership of a proscribed organization, whether there had been many convictions, and whether mere membership of the organization, in the absence of any other illegal activity, was in itself an offence.

14. Mr. ANDO first expressed concern about the rather vague and sweeping reservation made by the United Kingdom on ratifying the Covenant, whereby it reserved the right to apply to persons lawfully detained in penal establishments of any kind such laws and procedures as it might deem necessary for the preservation of discipline. However, detainees in penal establishments were a very heterogeneous group, which included suspects, convicted persons, adults, juveniles and people awaiting deportation or a decision on their application for entry. Clearly, different categories of detainees should receive different treatment, and he asked whether any consideration was being given to making the reservation more specific.

15. Mr. EL-SHAFEI observed that article 28 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China prohibited torture. However, article 7 of the Covenant was broader in scope, referring also to cruel, inhuman or degrading treatment or punishment. Although article 3 of the draft Bill of Rights for Hong Kong was in effect identical to article 7 of the Covenant, there was no assurance that article 7 would be implemented in its entirety, since, as the Committee had been told, the Bill of Rights would have equal status with any other law, and would thus be liable to amendment or even repeal.

16. Mr. AGUILAR, commenting on the statement in paragraph 125 of the report that payment of compensation would be considered only where unlawful detention had resulted from serious default on the part of a member of the police or some other public authority, requested a definition of serious default. The paragraph as worded implied that there were some types of error which might result in arbitrary detention, but that if they were not considered "serious" then there would not be any right to compensation.

17. He shared Mr. Mavrommatis' concern that reversal of the onus of initial proof, as described in paragraph 114 (c) of the report, amounted to a presumption of guilt. He also wished to know what the scheduled offences comprised.

18. Like Mr. Mavrommatis, he believed that the compensatory safeguards referred to for trials without jury were already in existence for jury trials. There was a need for the verdict to be in writing, and for an automatic right of appeal, both under domestic law and under the Covenant. He expressed concern about the power of arrest described in paragraph 114 (e) in respect of "any offence" on members of the armed forces. If the provision really did cover any offence at all, it would appear that - to give an absurd example - if a pickpocket stole the wallet of a soldier he could be arrested by the security forces. He wanted to know if there were any limitations on the power of arrest in such cases.

19. He also asked how far the prerogatives of the security forces extended in such areas as arrest and entry into houses and what use could be made of deadly weapons, in view of the large number of deaths in Northern Ireland. Finally, he wished to know what criteria were applied to declare an organization a proscribed organization.

/...

20. Mr. HALLIDAY (United Kingdom), replying to the question of why a distinction had been drawn between abolition of corporal punishment in State schools or on State-funded pupils, and its continued legality in private schools, said that the Government had wished to stop short of criminalizing every form of chastisement of children. Excessive punishment of a child would be covered by the ordinary law on offences against the person.

21. In response to Mr. Lallah's question about the requirement of approval by the Attorney-General for prosecutions for torture, he explained that the purpose was to provide safeguards against prosecution in cases where the evidence was unsound or insufficient. Such a provision was far from unique in the law of the United Kingdom, being found, for example, in the legislation dealing with incitement. The provision made the position the same as that in Scotland, where there was no opportunity for private prosecution.

22. In response to Mr. Wennegren's question, he stated that any medical treatment without the consent of the patient would be an assault under the law. In addition, medical ethics applied.

23. Changes affecting the remission of sentences of imprisonment were under consideration in a new Criminal Justice Bill. The issue of additional punishment resulting from the loss of remission was currently under review, and he therefore felt it inappropriate to comment. Similarly, the questions of parole and life sentences, including issues such as the openness of the procedure and appeals, were currently under very active review, and he thought it preferable not to comment on them at the current time.

24. He did not accept Mr. Myullerson's suggestion that the Covenant needed to be incorporated to ensure compensation for unlawful arrest, as an enforceable right to compensation already existed. The relevant paragraph of the report was perhaps not sufficiently clear on that point. The question of *ex gratia* payments was a separate issue, and he wished to clarify that even if an arrest itself was lawful an *ex gratia* payment might still be made should special circumstances come to light.

25. While agreeing with Mr. Myullerson that no distinction was made between convicted and non-convicted young persons when both were placed in secure accommodation, he explained that it was felt that such a distinction was not helpful. Whether or not a young person had behaved in a manner which had resulted in a conviction might not be the crucial factor in determining his or her problems, and indeed the criminal grounds for ordering commitment to secure accommodation were being abolished, with much more emphasis being placed on the welfare of the child.

26. An example of a case in which a child would be placed in secure accommodation was that of a child who, when placed in a normal environment in the care of the local authority, such as a foster family, proved extremely difficult to control, aggressive, abusive or likely to do himself harm. The statutory criteria specified that there had to be a serious risk of harm to the young person himself or to others, and that these risks had to exist continuously.

/...

(Mr. Halliday, United Kingdom)

27. The role of parents was strengthened considerably in the Children and Young Persons Act, which provided that parents must be given their proper place in decision-making about their children at every stage.

28. Unlike in jury trials, in which the verdict of guilty or not guilty was not accompanied by any reasons whatsoever, in non-jury trials the judge was required to make a statement of his reasons for his finding. That provided new and different opportunities for basing appeals on the actual finding of guilt.

29. The provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 neither removed the right to silence nor reversed the burden of proof. The individuals concerned had to be informed of the consequences of their remaining silent but no obligation or compulsion whatsoever was involved. There was also no reversal of the presumption of innocence. The Order amended the ordinary criminal law on evidence in order to permit the court to draw such inferences as appeared proper from the fact that an accused person remained silent and, on the basis of those inferences, to treat his refusal as - or as capable of amounting to - corroboration of any evidence against him. The silence of the accused was therefore not evidence in itself but could serve to corroborate other evidence in the case.

30. There were only four situations in which such inferences could be drawn. The first was when the accused, having remained silent during police questioning, offered an explanation for his conduct for the first time during his trial. The second was when the prosecution had established that there was a case and the accused was called to give evidence in court. The third was when the accused failed or refused to explain to the police certain specified facts, such as substances or marks on his clothing. The fourth was when the accused failed or refused to account for his presence in a particular place. Only in those four situations and only when the accused opted to remain silent could an inference be drawn which might amount to corroboration of other evidence in the case.

31. With respect to the United Kingdom's reservation on article 10 of the Covenant, he observed that article 10 of the Covenant did not lay down any specific requirements regarding arrangements for prisoners. While the United Kingdom would continue to keep the matter under review, it had no intention of changing its current practice.

32. The power of the security forces to arrest people on suspicion of any offence was limited, since suspects could be detained for a maximum of only four hours. Unless the police intended to take any action under the criminal law, the person concerned would have to be released.

33. There were very strict rules governing the use of deadly weapons. He had already provided figures on the number of people who had died as a result of action taken by the security forces. In Northern Ireland, terrorist activity had resulted

/...

(Mr. Halliday, United Kingdom)

in a very much larger number of deaths and very serious injuries. There was clearly a situation of high risk in Northern Ireland and the security forces were heavily engaged in seeking to prevent and counter terrorism there.

34. Mrs. EVANS (United Kingdom) said that sections 56 and 58 of the Police and Criminal Evidence Act gave persons detained in England and Wales the right to have access to legal advice and to have someone informed of their arrest. Sections 14 and 15 of the Northern Ireland (Emergency Provisions) Act 1987 contained similar provisions. While the special circumstances of a particular case might dictate a temporary delay, both the maximum length of the delay and the circumstances in which the delay could be authorized were closely controlled. If a delay was deemed appropriate, it could be authorized only by a police officer of at least the rank of superintendent for a maximum period of 48 hours. If, during the course of those 48 hours, the reasons for delay ceased to exist, the rights of the detained person were immediately granted. Delay was justified in circumstances in which the provision of information to the person whom the accused or suspected terrorist had asked to be informed might lead to interference with or harm to evidence, cause physical injury to other persons, alert others to the situation, hinder recovery of property, lead to interference in the collection of information about terrorist acts, or make it more difficult to prevent an act of terrorism or to secure the apprehension, prosecution or conviction of a person suspected of having committed an act of terrorism.

35. The provisions of section 9 of the Northern Ireland (Emergency Provisions) Act 1978 did not in any way deny rights of a suspect or accused person under article 14 of the Covenant. Section 9 of that Act stated that, if a person had been charged with a particularly serious offence, such as possession of explosive substances, firearms or petrol bombs, and the prosecution had proved that both the accused and the particular article were found together at the time, or that the accused had occupied the premises of a building in which one of those articles had been found, then it was up to the defence to prove that the accused did not have the article in his possession.

36. With respect to the admissibility of confession statements, the law in Northern Ireland made provision for both scheduled and ordinary criminal offences. The Police and Criminal Evidence (Northern Ireland) Order contained extensive provisions relating to ordinary criminal offences and ensured that statements obtained through oppression or other forms of ill-treatment were not admissible and allowed the judge to rule on admissibility if there was any suggestion that evidence had been unfairly obtained. With respect to scheduled offences the situation was much the same. The provisions of the Northern Ireland (Emergency Provisions) Acts 1978 and 1987 were being consolidated into one clause in the bill on emergency provisions currently before Parliament.

37. Under the Prevention of Terrorism (Temporary Provisions) Act 1989, the maximum penalty for membership in a proscribed organization was imprisonment not exceeding 10 years, or a fine, or both. In summary convictions, the penalty was imprisonment not exceeding six months, or a fine of not more than £2,000, or both. The law of

/...

(Mrs. Evans, United Kingdom)

Northern Ireland provided for similar penalties. Mere membership in a proscribed organization was considered an offence. However, in cases where a person had been a member of an organization before it had been proscribed, and where that person had not taken an active part in the organization after its proscription, there was a defence to the offence of membership. Very few organizations had been proscribed under the legislation of the United Kingdom, and those organizations had been proscribed because of their involvement in terrorism. Regrettably, she had no statistics on the number of convictions for such offences. A number of organizations had been proscribed under the Prevention of Terrorism (Temporary Provisions) Act and the current Northern Ireland (Emergency Provisions) Act. Those Acts conferred power on the Secretary of State to add to that list; the criteria for doing so were based on the organization's involvement in promoting or encouraging acts of terrorism.

38. Examples of scheduled offences under the Northern Ireland (Emergency Provisions) Act were: murder, manslaughter, riot, kidnapping, various serious offences against the person, and offences involving explosives. The Act provided that the Attorney-General for Northern Ireland could certify that, in any particular case, an offence which was included in the schedule of scheduled offences was not to be treated as a scheduled offence and that the case could be tried by jury. The criterion used by the Attorney-General was whether or not the circumstances of the offence were connected with the emergency in Northern Ireland. The schedule of scheduled offences was kept under careful review, and the Government was committed to providing a jury trial wherever possible.

39. Mr. STOCK (United Kingdom), responding to Mr. El-Shafei's observation on article 7 of the Covenant, said that, while the Covenant would be entrenched in the Hong Kong Bill of Rights and while it was true that the Bill of Rights, when enacted, could be amended or repealed, any Hong Kong legislature would be slow to amend, let alone repeal, the Bill of Rights. With respect to the Basic Law itself, Mr. El-Shafei had expressed concern that article 28 of the Basic Law dealt with torture in a way which only partly reflected article 7 of the Covenant. Article 39 of the Basic Law made it clear that the provisions of the Covenant as applied to Hong Kong would be implemented through the laws of the Hong Kong Special Administrative Region.

Right to fair trial (articles 14 and 15 of the Covenant) (section IX of the list of issues)

40. The CHAIRMAN read out section IX of the list of issues concerning the third periodic report of the United Kingdom of Great Britain and Northern Ireland, namely: (a) clarification of the statement in paragraph 210 of the report that in cases involving offences under the common law there was no time-limit in Scotland within which the trial of the accused must take place; (b) any cases of applications for payment of compensation for a miscarriage of justice under section 133 of the Criminal Justice Act 1988 and, if so, with what results; (c) with reference to paragraph 216 of the report, information regarding any

/...

conclusions reached by the Government as to the amendments which should be made to the right of silence in England and Wales; and (d) information on whether or not the recommendation of the War Crimes Inquiry relating to the introduction of war crimes legislation had been implemented.

41. Mr. HALLIDAY (United Kingdom) said that Scotland had been in the forefront in incorporating into law specified time-limits for the hearing of cases. Those time-limits did not apply to summary offences; nevertheless, if a case was unduly protracted, the court had full discretion to strike it out. One of the reasons for making that kind of distinction was that the more serious offences were likely to result in people being remanded in custody, and it was in those cases that speedy settlement of the trial was most important. In the great majority of summary cases, people were likely to be either released on bail or simply awaiting a summons to court.

42. Referring to section IX (b), he said that, under section 133 of the Criminal Justice Act 1988, eight applications had been approved by the Secretary of State: one in 1988, five in 1989 and two in 1990. So far, one of those applications had been completed through to final payment. The procedures included independent assessment of the claim so that a recommendation for the amount could be made; inevitably, that process took time.

43. Responding to section IX (c), he said that a number of possibilities had been considered with respect to amending the right of silence in England and Wales, and that the establishment of the Royal Commission of Criminal Justice meant that it would be important to take account of any views which that Commission might express. The Royal Commission provided an opportunity to examine the matter in its widest possible context and to take account of all arrangements made for criminal trials and appeals and for dealing with allegations of miscarriages of justice.

44. With respect to section IX (d), the report of the War Crimes Inquiry had been debated in December 1989 and, in March 1990, the Government had introduced a bill the main provisions of which were to give the courts of the United Kingdom jurisdiction over the offences of murder or manslaughter committed as war crimes in Germany or German-occupied territory during the Second World War and to make arrangements for transferring the committal proceedings for any such cases to the higher court. That bill had been passed in 1990 in the House of Commons by a vote of 273 to 60. On 4 June 1990, the House of Lords had voted against the bill after its second reading, by a majority vote of 207 to 4. The Government had subsequently reintroduced the bill in identical form. On 18 March 1991, the House of Commons had completed its second reading of the bill, which was passed by a vote of 254 to 88 after its third reading on 25 March. The bill was to be debated further in the House of Lords, where there would be an opportunity to consider whether or not to give it a second reading and, if a second reading was given, whether or not to amend it, in which case any amendments would have to be considered by the House of Commons.

45. Ms. CHANET wished to know the exact mandate of the Royal Commission of Criminal Justice and whether it dealt only with penal procedure or if it also dealt with judicial structures, in particular the Court of Appeal and Privy Council. She inquired whether there was a system which guaranteed both the police and the defence equal access to evidence and, in particular, what system of legal aid existed which ensured such equality. Further, she wished to know what means the United Kingdom had for controlling and verifying evidence which the police collected. She wondered whether there was a system for obtaining expert testimony and whether experts were included on a government-controlled list or whether there was complete freedom of choice in securing the testimony of expert witnesses. She requested information on when a lawyer became involved in a case, including proceedings concerning acts of terrorism.

46. She was aware that, in certain cases, the right of appeal was possible only when a law was called into question and when the court itself gave authorization to make an appeal. That practice was not in conformity with article 14 (5) of the Covenant, and she requested information regarding the situation in the United Kingdom; specifically, she wished to know whether the right of appeal was guaranteed absolutely.

47. Referring to judicial errors and ways to remedy them, she requested the delegation of the United Kingdom to explain what had led to the error in the Birmingham Six case and why the error had not been discovered for six years.

48. She repeated her question concerning the right to remain silent, and whether it was in keeping with the provisions of article 14 (3) (g) of the Covenant, for she said it was clear from the answer given that she had not made herself plain. What she wanted to know was the consequences and the impact of remaining silent with respect to a person's guilt, whether, in fact, his decision to remain silent was considered as one element among others in judging his guilt or innocence or whether it was considered tantamount to the admission of guilt.

49. Mr. AGUILAR asked about access to evidence by the parties, especially the accused, in cases brought under terrorism legislation, or by the legal representatives or relatives of persons killed or injured apparently as a result of terrorism. The information provided suggested that such access was possible only once the trial was under way, whereas access by the State was possible from the time the act was committed. There seemed to be a degree of inequality in that regard.

50. With respect to the verification and corroboration of evidence in the hands of the police, especially confessions made while in police custody prior to trial, he asked when the accused had the right to legal counsel, and whether he had such access at every stage, including the time when he was making his statement to the police.

(Mr. Aguilar)

51. He requested further information concerning Scotland where, according to paragraph 118 of the report, evidence would be declared inadmissible if it were shown that a statement made by a suspect in answer to a police question had been obtained under duress. In particular, he asked who bore the burden of proof in that regard.

52. With respect to the right of appeal by persons not being charged under terrorism legislation, it appeared from paragraph 114 of the report that there was no right of appeal in the United Kingdom, which was contrary to what he had always believed; he requested clarification of the point.

53. As for the right to remain silent, he had been very concerned about the cases of the Guildford Four and the Birmingham Six and other cases, such as the disturbances at the Broadwater Farm Estate in London, where there had been allegations about statements obtained by the police in which duress had been employed to extract confessions and evidence fabricated. One of the most important elements in article 14 of the Covenant was the independence of the judiciary, and the various checks and balances which existed in other legal systems. However, as he understood it, the highest court of appeal in the United Kingdom was the House of Lords, which was a non-elected, and for the most part hereditary, section of the legislature; he sought clarification as to whether the Law Lords could at the same time sit in the House of Lords and act as legislators. He also asked how judges were appointed and by whom, especially as far as the highest courts were concerned; to whom were the judges accountable and was there a system of checks and balances. Finally, he requested clarification concerning the role of the Lord Chancellor, who appeared to belong to all three branches of government - the executive, the legislature and the judiciary.

54. Mr. SADI asked why the jurisdiction over war crimes envisaged by the United Kingdom would extend to war crimes relating to the Second World War and occurring in Germany and German-occupied territory. He also asked why proposed legislation provided for jurisdiction over war crimes only in respect of British citizens or residents of the United Kingdom, while under international law such jurisdiction would cover any person apprehended in the United Kingdom.

55. Mr. EL-SHAFEI expressed concern with regard to article 23 of the Basic Law of the Hong Kong Special Administrative Region which stated that laws would be enacted to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies. Many foreign political organizations or bodies were entirely harmless, and contact with them could be regarded only as beneficial, and he was worried about the very restrictive language of article 23 of the Basic Law, which seemed to run counter to the spirit of article 22 of the Covenant. He also wondered whether the courts in Hong Kong were entitled to deal with crimes of treason, secession, sedition, subversion against the Central People's government or theft of State secrets since the commission of such crimes would probably involve foreign Governments or their agents.

/...

(Mr. El-Shafei)

56. Article 19 of the Basic Law also gave him cause for concern because there seemed to be a contradiction in its statement that the courts would have no jurisdiction over acts of State such as defence and foreign affairs. It was his view that confusion might be created for the courts themselves. With reference to the second paragraph of article 19 and article 81 of the Basic Law concerning the establishment of a Court of Final Appeal, he asked how the judicial system in Hong Kong would be maintained after 1997.

57. Mr. DIMITRIJEVIĆ asked what the terms of reference of the Royal Commission on Criminal Justice were and whether any improvements could be made to the criminal justice system in England and Wales pending receipt of the Royal Commission's report in two years' time. He also asked whether the right guaranteed under article 14 of the Covenant to have one's conviction and sentence reviewed by a higher tribunal according to law was fully guaranteed in the United Kingdom. With respect to the provisions of article 14 (3) (d) of the Covenant regarding free legal aid, he asked what mechanism existed for obtaining legal aid and whether the Government of the United Kingdom was considering any improvements in its provision in view of reports which he had read in British newspapers to the effect that free legal aid tended to be of poor quality and that lawyers were reluctant to undertake such assignments anyway.

58. Mr. LALLAH asked if any measures were taken to ensure that prosecution was not delayed, for in cases where prosecution took place after a delay of many years a problem arose for the accused, who might be inhibited in conducting his defence, possibly finding that witnesses had disappeared. He also asked about a case involving a police officer in Hong Kong, with a good record of service, who had been irregularly dismissed, and who had taken more than 10 years to clear his name and secure compensation in the form of back pay. Specifically, he wanted to know the length of time which trials in Hong Kong took in cases where someone was deprived of a livelihood for a number of years.

59. Mr. HALLIDAY (United Kingdom) said, in answer to one of the questions raised by Ms. Chanet, that while it had been customary in England and Wales to characterize the legal system there as adversarial, by comparison with the inquisitorial system that existed on the continent of Europe, that distinction was too simple and the system in England and Wales was becoming more inquisitorial. That aspect would be considered by the Royal Commission on Criminal Justice.

60. The mandate of the Royal Commission on Criminal Justice was to examine the effectiveness of the criminal justice system in England and Wales in securing the conviction of those guilty of criminal offences and the acquittal of those who were innocent, having regard to the efficient use of resources, and in particular to consider whether changes were needed in the conduct of police investigations and their supervision by senior police officers, and in particular the degree of control that was exercised by those officers over the conduct of the investigation and the gathering and preparation of evidence; the role of the prosecutor in supervising the gathering of evidence and deciding whether to proceed with a case, and the arrangements for the disclosure of material, including unused material, to

(Mr. Halliday, United Kingdom)

the defence; the role of experts in criminal proceedings, their responsibilities to the court, prosecution and defence, and the relationship between the forensic science services and the police; the arrangements for the defence of accused persons, access to legal advice and access to expert evidence; the opportunities available for an accused person to state his position on the matters charged and the extent to which the courts might draw proper inferences from primary facts, the conduct of the accused, and any failure on his part to take advantage of an opportunity to state his position; the powers of the courts in directing proceedings, the possibility of their having an investigative role both before and during the trial, and the role of pre-trial reviews; the courts' duty in considering evidence, including uncorroborated confession evidence; the role of the Court of Appeal in considering new evidence on appeal, including directing the investigation of allegations; and the arrangements for considering and investigating allegations of miscarriages of justice when appeal rights had been exhausted.

61. Any changes in the criminal justice system in England and Wales were dependent on the outcome of the inquiry of the Royal Commission.

62. As for the equality of defence and prosecution under the current arrangements and the disclosure of evidence, there was a presumption in the law that the prosecution would make full disclosure of its case to the defence, and the Attorney-General of the United Kingdom had issued clear guidelines to prosecutors to ensure that that obligation was fully carried out. In any event, the matter fell within the terms of reference of the Royal Commission.

63. On the verification of evidence before trial, he said that the recommendations made some 10 years earlier by the Royal Commission on Criminal Procedure had led to the creation of the Crown Prosecution Service, which now handled all prosecutions in England and Wales; in Scotland, the Procurator Fiscal System had already been in existence. Whereas in the past the police had handled a great many of their own prosecutions, there was now full exposure of police evidence to qualified prosecuting authorities who could and frequently did ask for police inquiries to be continued and could and frequently did decide that the evidence presented was not sufficient to warrant prosecution.

64. In answer to another question raised by Ms. Chanet, he said that there was no approved list of expert witnesses as such for the use of prosecution and defence, although there was a forensic science service, provided by the Home Office, most of whose work was done for the police but whose services were also available to the defence. Other professional experts could be called by either party, and their credibility, background and expertise were fully tested in the court proceedings.

65. Access to legal advice was in principle available immediately after arrest, although in terrorist cases that access might be withheld for 48 hours.

66. As for the right of silence, there was a requirement that a formal warning be given by the police that anything said might be used as evidence, so a suspect was clearly notified that he was not obliged to say anything.

/...

(Mr. Halliday, United Kingdom)

67. With regard to appeal rights, appeals from the Crown Court might be made on any ground involving a question of law alone, but on any ground involving a question of fact or a mixture of law and fact, or on any other ground which was regarded as sufficient, leave of the Court of Appeal was required, and once a certificate of leave had been granted the appeal had to be heard. In Scotland, no such leave was required. It was the opinion of the Government of the United Kingdom that those arrangements were consistent with its obligations under article 14 (5) of the Covenant.

68. On the question concerning onus of proof with regard to the admissibility of evidence, he said there was nothing he could add to what had already been said in answer to previous questions by Mrs. Evans.

69. The concern expressed about police malpractice was fully shared by the United Kingdom authorities, and it had indeed been as a result of the efforts of the Government's forensic science service that some of that malpractice in terms of interference with statements had been discovered, brought to light and put back before the courts in order to secure the necessary redress for those concerned. Substantial safeguards had been introduced following the report of the Royal Commission on Criminal Procedure; there was also the complaints procedure with its independent element. It should be said that despite the existence of some very well publicized and important cases that gave rise to concern, the vast majority of criminal cases were dealt with in an entirely satisfactory manner.

70. He acknowledged that difficulties arose when dealing with an unwritten Constitution, although there was great concern in the United Kingdom to maintain the separation of powers, and the independence of the judiciary was highly prized.

71. For the benefit of Mr. Aguilar he explained that the final court of appeal was not the House of Lords itself, but the Law Lords. The Lord Chancellor did appoint the higher judiciary, but entirely on the basis of expertise and experience, and it was not a matter of controversy in the United Kingdom.

72. On the subject of war crimes, he said that the Government of the United Kingdom did not believe that without the War Crimes Bill it would have the necessary jurisdiction over non-British citizens in the circumstances dealt with by that Bill, although the Geneva Conventions Act, 1957, was sufficient to deal with conflicts subsequent to that date.

73. Replying to Mr. Dimitrijević's questions, he said that the United Kingdom Government had done a great deal in the field of legal reform over the past five years. It would take no further action, however, until the Royal Commission currently at work had submitted its report. That Commission had been given a very broad mandate and had been asked to complete its report within two years. Both those facts were an indication of the Government's continued interest in legal reform.

(Mr. Halliday, United Kingdom)

74. The question of the quality of legal aid was a matter of some debate in the United Kingdom. It was a complicating factor that the use of such aid, which was freely available in both civil and criminal cases, had greatly increased in recent years. A review of the question of eligibility with respect to legal aid was currently in progress and the concern expressed by Mr. Dimitrijević would no doubt be taken into account as part of that review.

75. Replying to another question, he said that the courts were able to intervene in cases where they considered that there had been undue delay and had in fact done so recently.

76. Mr. STOCK (United Kingdom) said, in reply to Mr. El-Shafei's question about Hong Kong, that the courts did have jurisdiction over crimes of sedition and treason. Replying to the question relating to article 23 of the Basic Law, he said that the laws referred to were those to be enacted by the Hong Kong Special Administrative Region. In connection with the question relating to article 19, he pointed out that it was expressly provided that jurisdiction of the courts would be limited only by the existing legal system; with respect to paragraph 3 of article 19, he would point out that some questions, such as that of the recognition of States, were referred to the Executive. The Privy Council would cease to exist after 1997, but annex I, section 3 of the Sino-British Joint Declaration provided for the establishment of a new Court of Final Appeal. In connection with Mr. Lallah's question concerning the long delay in resolving the case of the auxiliary policeman, he agreed that the case had indeed taken a long time but assured the Committee that the delay was quite unrepresentative of what usually happened in civil cases.

Freedom of movement and expulsion of aliens (articles 12 and 13 of the Covenant) (section X of the list of issues)

77. The CHAIRMAN read out section X of the list of issues concerning the third periodic report of the United Kingdom of Great Britain and Northern Ireland, namely: what difference was there between expulsion and exclusion, as referred to in paragraphs 202 to 204 of the report.

78. Mr. HALLIDAY (United Kingdom) said that exclusion was a term used in cases of suspicion of involvement in terrorist activities. The term "expulsion" was not used in legislation but referred in general to the removal of aliens from the United Kingdom by the Government under its immigration powers. The "exclusion" power was directed towards ensuring that where grounds for suspicion of involvement in terrorist offences existed the person suspected might be excluded from Great Britain, Northern Ireland or the United Kingdom, subject to the provisions concerning citizenship and residence.

Right to privacy (article 17 of the Covenant) (section XI of the list of issues)

79. The CHAIRMAN read out section XI of the list of issues concerning the third periodic report of the United Kingdom of Great Britain and Northern Ireland, namely: the effectiveness of the measures introduced under the Data Protection

/...

(The Chairman)

Act 1984 to safeguard the privacy of "data subjects" and whether the Act was applicable to all the dependent territories.

80. Mr. HALLIDAY (United Kingdom) said it was the Government's belief that the Act had been generally successful in accomplishing its purpose. The Act did not apply in the dependent territories. However, information in the territories was protected by rules of confidentiality and any breach of that confidentiality would be dealt with appropriately.

Freedom of expression, prohibition of propaganda for war and incitement to national, racial or religious hatred and freedom of association
(articles 19, 20 and 21 of the Covenant) (section XII of the list of issues)

81. The CHAIRMAN read out section XII of the list of issues, namely: with reference to paragraphs 258 and 259 of the report, whether there had been any evolution in the Government's position in respect of legislation relating to blasphemy and blasphemous libel; (b) whether the 1989 Official Secrets Act encompassed defence of the public good and applied to the dependent territories; (c) information on the effects of the Broadcasting Ban of 1988 and the outcome of the judicial review referred to in paragraph 265 of the report; (d) information on the 1989 Broadcasting Bill and its effect on freedom of expression; (e) information on the role of the new Radio Authority and whether it could act as a censor; (f) the status of the proposal to replace the Press Council with a Press Complaints Commission, and the latter's competence; and (g) whether there were any legal criteria for determining that an organization should be proscribed under the Prevention of Terrorism Act of 1989.

82. Mr. HALLIDAY (United Kingdom) said the Government was aware that the current legal situation with regard to blasphemy was unsatisfactory. However, there was a division of opinion within the United Kingdom between those who wished to abolish the legislation on the subject and those who wished to extend it further. The Government did not believe that the necessary consensus existed to change the legal situation. There were, however, other means of preventing the behaviour in question. With respect to the Official Secrets Act, he said that it made no provision for a "public good" defence; the Act was concerned with matters involving "serious harm to the interests of the country" and in such cases innocence of intent was irrelevant as well as too easy to claim and too difficult to disprove. The Act had not yet been extended to the dependent territories, although it made provision for such an extension. It was difficult to evaluate the effects of the Broadcasting Ban, but the general impression was that it had been highly effective. The outcome of the judicial review referred to in the report had been that the Government's action had been upheld by the House of Lords. The Government believed that the deregulation of broadcasting under the 1989 Broadcasting Bill should lead to greater freedom of expression. The role of the new Radio Authority was to license and regulate broadcasting; its powers had been clearly defined and limited in the Act establishing it. The Press Complaints Commission had been established by the press itself in response to widespread complaints about the press. The Government had supported that initiative, but it remained to be seen

/...

(Mr. Halliday, United Kingdom)

how effective the Commission would be and whether public pressure to regulate the press would subside as a result of its activity. The question of legal criteria for proscription under the Prevention of Terrorism Act had been dealt with in his reply to an earlier question.

Right to participate in the conduct of public affairs (article 25 of the Covenant) (section XIII of the list of issues)

83. The CHAIRMAN read out section XIII of the list of issues, namely: (a) comments on the Government's plans, if any, for affirmative action to promote the greater opportunities for the employment of members of ethnic minorities and women in the judiciary, Parliament, local government and the higher grades of the civil service; and (b) the legal basis for "positive vetting" for certain candidates for the civil service how the criterion of susceptibility to pressure from communist, Fascist or subversive organizations and groups had been interpreted in practice and whether a remedy existed for the unsuccessful candidate.

84. Mr. HALLIDAY (United Kingdom) said that the Government was determined to carry out its equal opportunity programme. The Employment Act of 1989 had made it possible for employers to offer training to members of particular ethnic groups and positive action had also been taken within the civil service in favour of women and members of ethnic minorities. He noted that the proportion of women among non-industrial staff in the civil service stood at 48 per cent and that the proportion of women at the higher levels had increased from 29 per cent in 1983 to 43 per cent. The Government had recently adopted the specific objective of increasing the representation of ethnic minorities at the executive officer level. In the case of the judiciary, judicial appointments were a matter for the professional bodies concerned; however he would point out that the Bar Council had recently taken positive action to help barristers belonging to ethnic minorities to develop the requisite experience and that the first black female Queen's Counsel had recently been appointed. Representation in Parliament was a matter for the political parties to act on, but all the parties were in fact sensitive to the need to take further action in that area.

85. The revised procedures for "vetting" of certain candidates for the civil service had been set out fully in the Prime Minister's statement on the subject of 24 July 1990, which he could make available to members of the Committee. It was impossible to deal with the question of susceptibility to pressure without going into individual cases; with respect to remedy, however, anyone who felt unfairly treated could bring the matter to an independent tribunal or the permanent head of the department concerned.

Rights of persons belonging to minorities (article 27 of the Covenant) (section XIV of the list of issues)

86. The CHAIRMAN read out section XIV of the list of issues, namely: information about groups and approximate numbers of members of ethnic minorities.

/...

87. Mr. HALLIDAY (United Kingdom) said that the question had been answered in his Government's supplementary report to the Committee. He would add, however, that a question concerning ethnic minorities would be included in the census which would be taken later in April 1991.

The meeting rose at 1 p.m.

UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1050
8 April 1991

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE 1050th MEETING

Held at Headquarters, New York,
on Wednesday, 3 April 1991, at 3 p.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States Parties under article 40 of the Covenant (*continued*)

Third periodic report of the United Kingdom of Great Britain and Northern Ireland (*continued*)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of the United Kingdom of Great Britain and Northern Ireland (continued) (CCPR/C/58/Add.6, Add.11 and Add.12)

1. At the invitation of the Chairman, Mr. Halliday, Mrs. Evans, Mr. Stock and Mr. Dykes (United Kingdom) took places at the Committee table.

2. The CHAIRMAN said that the United Kingdom delegation would proceed to answer questions held over from sections X, XI, XII, XIII and IV of the list of issues.

3. Mr. SADI said that it appeared that the scope of the blasphemy laws in the United Kingdom extended only to Christianity. He asked whether there was any debate in the country on extending them to cover other religions or abolishing them altogether. As matters stood, the blasphemy laws were clearly in contravention of the letter and spirit of the Covenant.

4. Paragraph 291 of the third periodic report (CCPR/C/58/Add.6) stated that "cohabitation in general carried with it none of the rights or obligations of marriage". How could such an arrangement, however convenient for those concerned, be reconciled with article 23 of the Covenant, which called on States Parties to protect the family structure in society?

5. Mr. WENNERGREN said that he would welcome some explanations in connection with the United Kingdom's approach to article 19 of the Covenant, and in particular its attitude to freedom of information. Article 19 affirmed the freedom to seek information, which implied free access to information from Government sources, albeit with some restrictions. Paragraph 254 of the report, on the other hand, stated that the Government was opposed to a general statutory right of access to information on the internal workings of government. The main thrust of the provision in the Covenant was that secrecy should be invoked only in the public interest and only in exceptional circumstances, and he wondered how that principle could be reconciled with the Government's reluctance to introduce a Freedom of Information Act.

6. In connection with the right of peaceful assembly, with particular regard to Hong Kong, he pointed out that the Covenant also made provision for exceptions only in the case of necessity, and he queried whether the Noise Control Ordinance and the Public Order Ordinance, referred to in paragraph 70 of the update on Hong Kong (CCPR/C/58/Add.11), could legitimately be invoked to restrict the right of peaceful assembly affirmed in article 21 of the Covenant.

7. Mr. EL-SHAFEI, noting that there had been a considerable effort to review, and in some cases amend or repeal, some of the laws applicable in Hong Kong which fell within the scope of article 17 of the Covenant, said that he welcomed the fact that

/..

(Mr. El-Shafei)

the Law Reform Commission was currently examining the law relating to information privacy. None the less, the existing legislation gave grounds for misgiving, and he asked what legal justification could be provided for the continuing incidence of phone-tapping and requests for telephone information by public bodies, and whether such practices were monitored by bodies independent of the executive.

8. Concerning article 19, he said that the Summary Offences Ordinance and the Education Ordinance seemed to confer excessively wide powers on the authorities in restricting the expression of public opinion. While noting that some progress had been made, he wondered whether the Government intended to make further amendments in the interests of greater freedom of expression.

9. Mr. WAKO said that article 13 of the Covenant was clearly intended to prevent arbitrary expulsions, but that its application in the United Kingdom, and more specifically to the Vietnamese refugees in Hong Kong, raised a number of important issues. Furthermore, the screening and detention procedures for such asylum-seekers seemed to lack the safeguards provided under article 14, paragraphs 3 (b), (d) and (f) in that they imposed restrictions on access to legal advice and representation during the early stages of the process and made no provision for interpretation services. Indeed, it seemed that in some cases in Hong Kong legal assistance had actually been denied. In that connection, he wondered whether the findings of the Court in the Do Giau case, referred to in paragraph 57 of document CCPR/C/58/Add.11, would be applied, and asked what steps were being taken to ensure that screening procedures conformed to the letter and spirit of the Covenant.

10. With regard to article 17, it would be interesting to have information on the regulations applicable in Hong Kong with respect to the right to privacy. It would also be interesting to know what steps were being taken in both the United Kingdom and Hong Kong to implement the right to receive and impart information (article 19), especially with regard to the right to obtain information from government institutions.

11. In connection with article 25, he asked whether the progressive measures on such issues as flexible working hours, job sharing, longer maternity leave and provision for day care of children which were being adopted in the United Kingdom would also be introduced in Hong Kong. He also wished to know whether allegations of discrimination against women in some sectors of public employment, such as the police, were well founded, and if so, what steps were being taken to eliminate such discrimination and to ensure equality of opportunity in both the public and private sectors.

12. Mr. MAVROMMATIS asked for clarification of the term "departures under supervision" in paragraph 188 of the third periodic report (CCPR/C/58/Add.6). Was it merely a euphemism for deportation without a deportation order?

/...

(Mr. Mavrommatis)

13. Concerning the blasphemy laws, he said that he could understand the United Kingdom Government's dilemma, which was whether to extend or to abolish the existing legislation, but that in his view the latter might represent the most acceptable approach.

14. He had gained the impression from the explanations provided by the United Kingdom representative regarding the vetting of civil servants that the authorities enjoyed sweeping powers which could be open to abuse and which were in any case somewhat outmoded in the light of the end of the cold war. He therefore believed that the criteria for vetting should be reviewed.

15. Mr. LALLAH, referring to article 17, questioned the United Kingdom representatives regarding the Anton Pillar orders, which seemed to compromise the right to privacy in civil proceedings.

16. Still within the context of article 17, he had noted from the replies of the United Kingdom representative that the Security Services Act applied only to one branch of the security services, namely MI 5, and not to MI 6 or to Government Communications Headquarters (GCHQ). He would welcome further clarification of the mandate of the security forces. He wondered in particular whether statements made by Members of Parliament might not render them liable to surveillance by the security services. It seemed to him that the powers exercised by those services extended to surveillance of persons engaged in perfectly legitimate political activities.

17. Noting that campaign expenditures were restricted under British election law, he asked whether similar restrictions applied to expenses incurred by parties. He noted that candidates for civil service posts not filled by appointment had recourse to tribunals. He wondered if they also had recourse to the highly developed British system of judicial review, as a safeguard against violations occurring secretly.

18. Mr. ANDO, referring to document CCPR/C/58/Add.12, paragraph 45, requested clarification of the "key people" category permitted to register as British citizens under the British Nationality (Hong Kong) Act.

19. Referring to a case which had come before the European Court of Human Rights, he inquired about restrictions on the publication of material about trials in progress, which could be construed as a form of censorship. The breach of confidence procedure, which authorized injunctions or even bans on pubishing news about civil lawsuits was cause for concern. In conclusion, referring to document CCPR/C/58/Add.11, paragraph 73, he asked whether any textbook or syllabus had been amended or forbidden in Hong Kong and, if so, on what criteria the decision had been based, and noted that such an action would be fraught with political implications.

20. Mr. AGUILAR, referring to section XII (g) of the list of issues and paragraph 276 of the report, said that there seemed to be an element of

/...

(Mr. Aguilar)

subjectivity in the Secretary of State's powers to proscribe organizations under the Prevention of Terrorism (Temporary Provisions) Act 1989. Clarification would be appreciated. Referring to comments by Mr. Halliday, he asked why certain legally constituted organizations were denied access to the media, especially radio and television. The ban on the use of loudspeakers in Hong Kong seemed to be a violation of article 19 of the Covenant and was particularly disturbing in view of a letter of 23 October 1990, which he read out to the Committee. In that letter, the Hong Kong Government assured the Government of the People's Republic of China that Hong Kong would not serve as a base for subversive groups, and reported that members of the April 5 Action Group had been arrested. Lastly, he would appreciate comparative statistics on the number of airline passengers entering and leaving Hong Kong.

21. Mr. MYULLERSON agreed with Mr. Ando regarding injunctions on the publication of court proceedings. He asked whether the United Kingdom had specified remedies in order to comply with the recent decision of the European Court of Human Rights in favour of a British newspaper on that issue.

22. Referring to article 25 of the Covenant, he sought clarification of the seeming contradiction in prohibiting members of political parties from holding civil service posts, while allowing members of the civil service to enter politics (para. 347), particularly local politics (para. 357). He wondered how the political activities of civil servants were restricted.

23. Referring to part II, section F of the report, which dealt with Hong Kong, he inquired whether the restrictions spelled out in paragraph 63 also applied to private gatherings such as weddings and funerals. Furthermore, the British delegation should provide information on the nature of the controls applied when gatherings exceeded 200 persons and on the number of meetings or processions which had been disallowed under paragraphs 64 (d) and (e).

24. Mr. PRADO VALLEJO referred to the powers of the Secretary of State under the Cable and Broadcasting Act 1984 (para. 262) and noted that the independence of the radio and television could be restricted in the interest of maintaining political impartiality. However, stifling debate on controversial issues had triggered a series of reactions in the United Kingdom. He was concerned that such a policy restricted freedom of expression and would appreciate information in that regard.

25. Mr. HALLIDAY (United Kingdom) expressed appreciation for the Committee's understanding that the law on blasphemy gave rise to certain problems. The question remained as to whether the law on blasphemy should be completely reformed. The fact that it did not apply to all religions did not contravene article 18 of the Covenant. Replying to a question by Mr. Sadi concerning cohabitation, he said that, in the United Kingdom, every effort was being made to take into account a wide range of views as to what constituted a family.

26. In reply to Mr. Wennegren, he said that information was available to British citizens through a variety of channels. Representatives of the government ministries appeared before both Houses of Parliament and representatives of

/...

(Mr. Halliday, United Kingdom)

Ministries and government offices appeared before a range of select committees of the House of Commons. A number of government publications provided information as well. He did not believe that the obligations under the Covenant in that regard were as comprehensive as some Committee members had suggested. Moreover, a distinction should be drawn between policy matters for discussion by Ministries and officials, on the one hand, and administrative or executive decisions affecting the lives of individuals, on the other, which could be reviewed on appeal or before the tribunals.

27. In response to Mr. Mavrommatis' question on polygamy (para. 176 of the report), he said that a woman's status as lawful wife was generally based on the fact that she had accompanied her husband to the United Kingdom and was residing there with him as his wife.

28. Under the system of supervised departure, a person who was in the country unlawfully could, at the authorities' discretion, leave voluntarily as an alternative to being deported. Re-entry was barred as long as a deportation order was in effect; however, anyone who left under the "supervised departure" system enjoyed the same status as any person applying to enter the country. Deportation orders were subject to review and could be revoked, if necessary.

29. He agreed with Mr. Mavrommatis that the report might have included the Prime Minister's statement on civil service entry requirements, but noted that it did provide some updated information. He could assure the Committee that the Government had thoroughly reviewed policies and procedures in that regard. Campaigning on industrial and political platforms was not viewed as threatening as long as there was no attempt to undermine Parliament or the Constitution. Ordinary campaigning could take place freely, with all the guarantees afforded by the country's fine tradition of parliamentary democracy and open debate.

30. Replying to Mr. Lallah, he said that the Anton Pillar orders had been taken up in the Chapel case before the European Court of Human Rights and that the rules to which it had made reference were contained in Supreme Court Act 1981. He took note of Mr. Lallah's comments on the right to privacy and confirmed his interpretation of the Security Service Act. That Act represented the first statutory text covering the secret service; it contained new safeguards and specified remedies which were as effective as possible under all circumstances. Complaints by organizations which were the target of investigation could be reviewed by a commissioner appointed under the Prevention of Terrorism (Temporary Provisions) Act 1989. He did not have sufficient data to be able to reply to Mr. Lallah's question on election expenditures.

31. Responding to Mr. Lallah's question about civil service screening, he said that employers should decide whether equal access also implied a uniformity of qualification standards. He did not believe so. In reply to Mr. Ando's question, he said that the persons who could apply to be registered as British citizens under the British Nationality (Hong Kong) Act would be determined by the Hong Kong

/...

Government in accordance with a scheme approved by the British Parliament. The scheme included four classes of persons representing the general occupational services, the discipline services, other services and entrepreneurs. Places would be allocated in two phases, the first of which would be completed by 1993. Cases recommended by the Governor would be considered on behalf of the Secretary of State by a small team of officials based in Hong Kong.

32. Replying to Mr. Aguilar, he said that decisions to proscribe organizations were subject to full parliamentary controls and that the remedy of judicial review was available. He had observed little disagreement in Parliament about which organizations should be proscribed. The Cable and Broadcasting Act applied to direct broadcasting by the organizations concerned, not to publication or indirect communication. It was therefore a limited order designed to guard against fomenting terrorism through publicity. In response to Mr. Prado Vallejo, he said that the Cable and Broadcasting Act was not intended to inhibit freedom of expression, but merely to establish independent radio and television commissions.

33. In reply to Mr. Myullerson, he said that the political activity of civil servants depended, in certain cases, on their seniority, but that they were, indeed, free to enter local government and national politics.

34. Mrs. EVANS (United Kingdom), replying to questions by Mr. Ando and Mr. Myullerson, said that restrictions on press coverage of court proceedings were carefully designed to strike a balance between freedom of expression and the proper administration of justice. In the case of non-jury trials, a strong consideration was that justice must be done, and that it must be clear that those adjudicating the case had not been influenced by any publication or broadcasts. It should be noted, however, that the right of appeal did exist under the Criminal Justice Act 1988.

35. Case law laid down what the position of the courts should be regarding interim injunctions in respect of breach of confidence. At issue was whether damages would be sufficient compensation if publication of proceedings destroyed the basis of a plaintiff's case. The case referred to by Mr. Myullerson, The Guardian v. The United Kingdom, was before the European Court of Human Rights. A hearing was expected to be held in June.

36. Mr. STOCK said, with regard to Hong Kong, that telephone intercepts could be authorized under the Telecommunications Ordinance in the public interest on the specific approval of the Governor if there was a risk to security. There were no specific laws dealing with subscriber information. The Bill of Rights Bill, once enacted, would impact on all earlier ordinances in connection with which Committee members had expressed concern.

37. With respect to freedom of information, anti-corruption legislation had been enacted in response to serious problems of corruption some years earlier. Reporting restrictions had been enforced during corruption cases so as not to forewarn those under investigation, although it would be possible for such restrictions to be lifted once an arrest had been made.

/...

(Mr. Stock)

38. The question of Vietnamese boat people had posed mammoth problems for Hong Kong, and the territory had made a genuine effort to deal fairly with them. It should, however, be noted that articles 13 and 14 of the Covenant related to those lawfully present in the territory of a State party, which was not true of the boat people in Hong Kong. An effort had been made to make screening and detention procedures as fair as possible. The criteria applied had been reviewed with UNHCR, and were subject to UNHCR scrutiny at all stages of the process. The Hong Kong authorities encouraged UNHCR to provide legal advice to asylum seekers. In fact, several asylum seekers had had recourse to the courts, and had been successful in pursuing their claims. Legal aid had been provided in those cases.

39. With regard to the reference in paragraph 73 of document CCPR/C/58/Add.11 to the power of the Director of Education to amend a school syllabus on educational grounds, he said that it would be for the courts to give an interpretation should those powers be exceeded. The provision had only recently been enacted and no such instance had so far arisen.

40. With regard to the suggestion that legal action might be initiated for political reasons, the Committee should note that the authorities did not themselves determine when prosecutions should be brought. That was a power vested in the Attorney General, who acted independently. In fact, the Attorney General had recently publicly rejected allegations of political prosecutions. The independence of prosecutors was provided for in both the Joint Declaration of the Governments of the United Kingdom and China and the Basic Law of the Hong Kong Administrative Region, continuing a situation which had long prevailed in the territory.

41. Commenting on the thought that Hong Kong might be turning away from freedom and towards oppression, he said that the facts of the situation were otherwise. For example, the laws governing homosexual behaviour had recently been amended, and corporal punishment had been abolished. There was an ongoing review of legislation, and there was no doubt that the rule of law was alive and well in Hong Kong. It was the intention of the Hong Kong authorities to review electoral legislation, and the Hong Kong Bill of Rights Bill included provisions protecting the rights covered under the Covenant. If anything, Hong Kong was moving further along the road to freedom.

42. Mr. DYKES (United Kingdom), responding to questions, said that whether limitations were placed on the right of assembly on the ground of public nuisance would depend on the facts of the case. However, such cases were justiciable under the Bill of Rights. With regard to prohibitions of public meetings, meetings involving more than the numbers of people specified in the Public Order Ordinance required the authority of the Commissioner of Police, such permission having been withheld on six occasions in 1989 and 1990, either because of improper notification or because the venue was deemed unsuitable.

/...

(Mr. Dykes, United Kingdom)

43. With regard to equality of the sexes, there was no specific programme for the advancement of women in the civil service, although in reality equality prevailed. With respect to the police force, women accounted for approximately 10 per cent of the total force, and approximately 13 per cent of the inspectorate. A higher percentage of men was recruited deliberately because of the reality that police were exposed to situations in which the use of firearms was a necessity. Lastly, job advertisements did not discriminate on the basis of sex, other than where it was proper to do so given the requirements of the job.

44. The CHAIRMAN invited the members of the Committee to make their concluding remarks.

45. Mr. EL-SHAFEI said that the United Kingdom delegation had engaged in a useful and enlightened dialogue with the Committee. Most of the Committee's time had been devoted to the arrangements in place in Hong Kong prior to its reversion to the People's Republic of China. The constitutional and legal framework which would govern the future of Hong Kong involved all aspects of the rights covered under the Covenant. It was the Committee's duty to ensure that the specifics of the legislation that would apply in the territory in the future were consistent with the provisions of the Covenant.

46. Mr. LALLAH said that the responses of the delegation to questions raised in connection with a number of areas, for example, detention in Northern Ireland, had left him puzzled. One issue of particular concern was that of legal aid, which seemed to be excessively restricted in a society where legal advice was extremely expensive. The Committee's primary concern was, of course, the extent to which the provisions of the Covenant were applied under the United Kingdom's domestic legislation. In that connection, it seemed that there should be greater latitude for judicial review of substantive rights.

47. Ms. CHANET said, with regard to Northern Ireland, that a permanent state of emergency was in effect. She hoped that the current negotiations would lead to a positive outcome. Derogations under article 4 of the Covenant should be limited to the extent strictly required by the exigencies of the situation. With regard to criminal procedure, some of the procedures followed in the United Kingdom should have been the subject of a declaration of reservation in view of various shortcomings, particularly with regard to cases involving terrorist acts in Northern Ireland. She welcomed review of matters relating to evidence and jurisdiction by the Royal Commission and trusted that its recommendations would result in procedures more in accord with the Covenant. She hoped that appeals procedures would be brought more into line with article 14 (5) of the Covenant. Equally, she trusted that improvements would continue to be made to conditions of imprisonment, in accordance with article 10.

48. On the question of Hong Kong, she agreed that it was important to ensure full implementation of the Covenant to Hong Kong before its transfer to the People's Republic of China. It would have been easier for the United Kingdom to have included more specific provisions concerning the application of the Covenant in the

(Ms. Chanet)

Joint Declaration had it held a plebiscite, and she trusted that the United Kingdom Government might yet find it possible to conclude an agreement with the People's Republic of China to strengthen protection of the rights provided for under the Covenant.

49. Mr. SADI said that the third periodic report of the United Kingdom was remarkable both for its scope and for its recognition that many aspects of the country's laws concerning human rights were in need of improvement. He reiterated that the existing legislation on war crimes was not extensive enough and should be modified; the same was true of the blasphemy and immigration laws. In addition, the reservations which the United Kingdom maintained with respect to the Covenant remained a cause of concern. The status of the Covenant in Hong Kong still was not sufficiently assured; perhaps the United Kingdom could use the Committee's observations as leverage to negotiate a more satisfactory formula concerning the Covenant. Given the uncertainties created by the forthcoming transfer of sovereignty, a supplementary report on Hong Kong was in order. In Northern Ireland, there was an evident need for more equitable administration of justice. The emergency legislation relating to terrorism clearly required refinements to make it more consistent with the letter and spirit of the Covenant.

50. Mr. WENNERGREN said that it might not be possible for the United Kingdom's common law system to cope with the rapid and sophisticated developments in the field of human rights, and urged the United Kingdom to enact a bill of rights which would guarantee all of the rights set forth in the Covenant and in other human rights instruments. With respect to article 7 of the Covenant, concerning inter alia medical experimentation, he raised the question of whether the laws governing the United Kingdom's penal system provided adequate protection against involuntary subjection to such experimentation, including studies of the placebo effect. Restrictions on freedom of information were another cause of concern, and the prerequisites for withholding information from the press and the public should be more strictly defined.

51. In Hong Kong, the United Kingdom should take a more constructive approach to the development of self-determination and democracy, in compliance with articles 1 and 25 of the Covenant. In particular, it was essential to abolish the death penalty as soon as possible. Public opinion could be induced to favour abolition if the population was informed that since 1966, all death sentences in Hong Kong had been, in effect, identical to sentences of life imprisonment. The system of human rights legislation would become very complex after the transfer of sovereignty in 1997, since it would involve three sets of provisions: articles 25 through 37 of the Basic Law, article 39 of the Basic Law (which provided for the applicability of the Covenant) and the Hong Kong Bill of Rights; immediate measures to coordinate and harmonize the contents of those provisions were therefore essential. He wondered whether the consent of the States parties to the Covenant was required for article 39 of the Basic Law, which inter alia referred to the obligation of reporting to the Committee on compliance with the Covenant. He stressed that a report on Hong Kong should be submitted at least one year prior to the date the next periodic report from the United Kingdom was due, in order to give the Committee ample time to consider it before Hong Kong reverted to China in 1997.

52. Mr. MYULLERSON welcomed the progress which the United Kingdom had made in the area of safeguarding human rights since the time of its second periodic report. However, he remained concerned about reports that killings by members of the security forces in Northern Ireland were not always thoroughly investigated. In addition, since the United Kingdom would be unable to guarantee full implementation of the Covenant in Hong Kong after 1997, he hoped that the delegation of the United Kingdom would convey to its Government and to the Hong Kong Administration the concerns and observations of the Committee, and that provisions which addressed those concerns would be incorporated into Hong Kong's legislation before 1997. Another problematic issue was the exercise of censorship through court injunctions preventing the publication or broadcasting of information to which the public rightfully should have access. Finally, he hoped that the Government of the United Kingdom would review its reservations with respect to the Covenant and would withdraw at least some of them.

53. Mr. PRADO VALLEJO said he was concerned about six main issues which had been raised in the consideration of the United Kingdom's third periodic report: (1) the excessive powers enjoyed by police in Northern Ireland under anti-terrorism laws, which affected the standards proclaimed in the Covenant; (2) abuses and discrimination in the application of the Immigration Act 1971; (3) insufficient participation by the people of Hong Kong in the process of planning their future, given the principle that the population should actively exercise its right to self-determination; (4) the United Kingdom's many reservations with respect to the Covenant, which tended to distort the application of the Covenant's provisions; (5) the necessity for the United Kingdom to ratify the Optional Protocol to the Covenant to enable its citizens to present allegations of human rights violations before the Committee; and (6) the excessive powers to limit freedom of expression established under the various Broadcasting Acts. He trusted that the Government of the United Kingdom would give due consideration to those concerns and would continue to comply in good faith with its obligations under the Covenant.

54. Mr. AGUILAR noted that the United Kingdom's report covered a number of different territories and legal systems. Unlike Mr. Wennergren, he believed that the common law system was capable of guaranteeing the rights contained in the Covenant and that its adaptability enhanced its capacity to respond to the varied requirements of the different territories. There was, however, room for improvement in the United Kingdom's application of the Covenant. He hoped that the United Kingdom would withdraw its reservations with respect to the Covenant and that it eventually would ratify the Optional Protocol. Although it appeared that most human rights were effectively guaranteed in Hong Kong under the existing legal system, the future of those guarantees remained uncertain. For example, the Basic Law provided for derogations of the rights of the population, and did not provide for the application of sanctions in the event of non-compliance with the Joint Declaration.

55. With respect to Northern Ireland, he was concerned about the liberal rules regarding the use of firearms by police, and about the prolonged application of many of the emergency measures. Police in Northern Ireland also appeared to enjoy excessive powers with respect to detention and to procedures for obtaining

(Mr. Aguilar)

confessions. The United Kingdom had a special obligation to address the Committee's concerns in that its long-standing democratic traditions made it an internationally recognized paradigm of commitment to respect for human rights.

56. Mr. DIMITRIJEVIC said that the complexity of the geographically and legally fragmented picture presented in the United Kingdom's report was compounded by the fact that some of the rights set forth in the Covenant were addressed by a number of different laws and rules. He was concerned that the Covenant's ambiguous position in the United Kingdom's legal system would hinder its effective application, as in the case of recent decisions authorizing restrictions on freedom of expression under the Broadcasting Act. Since public opinion was the most valuable source of support for human rights, public awareness of the existence of the Covenant should be increased in the United Kingdom and the country's periodic reports to the Committee should be published and made widely available. Although it had been argued that the United Kingdom did not need to ratify the Optional Protocol because the Optional Protocol's provisions overlapped with those of the European system, the European system did not provide for monitoring procedures, and so the United Kingdom should give renewed consideration to ratification of the Optional Protocol.

57. He remained concerned that the right of appeal under article 14 (5) of the Covenant was not sufficiently guaranteed under the United Kingdom's criminal justice system and that the principle of the presumption of innocence was not protected under the emergency provisions. With respect to Hong Kong, he wondered whether article 22 of the Covenant, which he understood to include the international aspects of freedom of association, would be thus interpreted in light of the provisions of the Basic Law. It was essential that the legal system in Hong Kong be in a position to guarantee full respect for human rights by 1977. Accordingly, the United Kingdom's next periodic report, or at least the section on Hong Kong, must be submitted to the Committee in due time.

58. Mr. HERNDL said that the United Kingdom had the responsibility to do everything in its power to tighten Hong Kong's legal system and to make it completely consistent with the Covenant so that it could not easily be altered after the transfer of sovereignty in 1997. He hoped that practical ways would be found to ensure that China would fulfil its obligations to report to the Committee under article 39 of the Basic Law. He hoped that the United Kingdom would submit its next report on Hong Kong in due time so that the Committee could give it full and careful consideration.

59. Mr. WAKO said that there had been positive developments in the United Kingdom in such areas as criminal justice, prison conditions and family law reform. However, the situation in Northern Ireland and issues involving asylum seekers and non-discrimination were still causes of concern. Although experience had shown that the common law system functioned effectively, its complexity often made the remedies available in specific cases difficult to determine; he therefore urged the United Kingdom to consider ratifying the Optional Protocol as a matter of priority.

/...

(Mr. Wako)

60. The Joint Declaration and the Basic Law represented important steps towards addressing human rights issues in Hong Kong. However, the Hong Kong Bill of Rights was not yet law, the Letters Patent had not yet been amended and the Law Reform Commission was still considering laws regarding privacy, illegitimacy, police powers and other matters. Not only should the rights proclaimed in the Covenant have their due place in Hong Kong's legal system, but the reporting mechanisms provided for in the Covenant must also continue to be implemented after 1997. It would be useful for the Committee to receive biennial reports on Hong Kong.

61. The CHAIRMAN noted that the Committee's observations on the situation in the United Kingdom and its dependent territories had focused on Northern Ireland and Hong Kong. He welcomed the United Kingdom's recent decision to conduct negotiations with Northern Ireland in order to reach a solution that would provide full protection for human rights. With respect to Hong Kong, the United Kingdom had a responsibility to hand over the territory to China under conditions that would prevent any erosion of the current standard of protection for human rights. The Government of the United Kingdom appeared to agree with the Committee's interpretation of the situation: that China had entered into international legal obligations in respect of Hong Kong and that the Joint Declaration and the Basic Law encompassed the implementation of all the provisions of the Covenant, including those which were of a procedural nature. The Government of the United Kingdom should ensure that that interpretation was accepted by the Government of China. He was confident that the delegation would convey the Committee's concerns to its Government and that the Government would take those concerns into account in carrying out its responsibilities in both the United Kingdom and its dependent territories. The fourth periodic report of the United Kingdom would be due on 18 August 1994.

62. Mr. BEAMISH (United Kingdom) assured the Committee that he would report its views to both the Government of the United Kingdom and the Hong Kong Administration. However, the Committee should bear in mind that the Basic Law of the Hong Kong Special Administrative Region had been drawn up by the People's Republic of China, and that the delegation therefore had not been in a position to give authoritative interpretations of individual provisions of the Basic Law. He welcomed the Committee's intention to continue monitoring the situation in Hong Kong in the future.

63. Mr. HALLIDAY (United Kingdom) said that his Government placed great importance on hearings before the Committee to monitor compliance with the Covenant and that it would be duly notified of the Committee's concerns regarding the third periodic report.

The meeting rose at 6.15 p.m.

UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1051
9 April 1991

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE 1051st MEETING

Held at Headquarters, New York,
on Thursday, 4 April 1991, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. AGUILAR (Vice-Chairman)

later: Mr. POCAR (Chairman)

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Panama

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Panama (CCPR/C/42/Add.7 and 11)

1. At the invitation of the Chairman, Mr. Cruz and Mr. Pereira Burgos (Panama) took places at the Committee table.

2. Mr. CRUZ (Panama), introducing his Government's report, observed that it was being submitted in very special circumstances, since on 20 December 1989 a democratically elected Government had taken power from the military dictatorship that had ruled since 1968. Ever since taking office, the current Government had taken significant steps to improve the human rights situation in Panama.

3. He had to admit that most of the people of Panama were somewhat ignorant of the international system for the protection of human rights. Panama had ratified the Covenant in 1976 and the Inter-American Convention on Human Rights in 1978, and the latter was probably a little better known among the people because of the proximity of Costa Rica, where the Inter-American Institute of Human Rights and the Inter-American Court of Human Rights were based.

4. There was no doubt that much still remained to be done in the area of human rights in Panama, but the main point was that the Government now had the political will to promote the human rights of both nationals and foreigners.

Constitutional and legal framework within which the Covenant is implemented (articles 2 (2) and (3) of the Covenant) (section I of the list of issues)

5. The CHAIRMAN read out section I of the list of issues concerning the second periodic report of Panama, namely: (a) the status of the Covenant, the manner in which any conflict between the Covenant and domestic law could be resolved, the possibility that any subsequent legislation might suspend the Covenant in view of the latter's status as "municipal law"; (b) the possibility of invoking the Covenant directly before the administrative authorities and courts in Panama, and the outcome of any cases where the provisions of the Covenant had been directly invoked before the courts; (c) comments on whether the removal, under Act No. 33 of 1984, of one of the available generic remedies applicable in administrative matters had in fact been advantageous to individuals; and (d) information on activities promoting greater awareness, on the part of both administrative authorities and the public, of the provisions of the Covenant and the Optional Protocol.

6. Mr. CRUZ (Panama), referring to section I (a) of the list of issues, said that the Covenant ranked at least as high as the Constitution, if not

/...

(Mr. Cruz, Panama)

higher. Admittedly, in the past there had been various theories as to the status of the Covenant in Panama, some jurists ranking it above the Constitution, some at the same level and others beneath it. Such inconsistencies were reflected in Panama's reports to the Committee, where the Covenant was described as having the status of "municipal law" (as in CCPR/C/42/Add.7, para. 5). However, the Supreme Court of Justice had some years earlier, in a case challenging the constitutionality of a treaty, declared that it was impossible to consider a treaty unconstitutional because of the supranational nature of treaties; and since article 4 of the Constitution further established that Panama abided by the rules of international law, there was no question that the Covenant had at least constitutional rank. Thus, no subsequent law could derogate from the Covenant, any more than could the Supreme Court itself, which did have the power to suspend domestic laws. Were there ever a conflict between a provision of the Covenant and a domestic law, a Supreme Court ruling on the matter could be obtained, as had been done in the case of other, bilateral treaties.

7. Referring to section I (b) of the list of issues, he said that the provisions of the Covenant could be invoked directly before the administrative authorities and courts in Panama and that they had been, particularly during the last three or four years of the dictatorship. Many habeas corpus actions had invoked the provisions of the Covenant as well as of domestic legislation. However, it must be said that the Supreme Court in Panama had never in its rulings taken into account the provisions of the Covenant. As he had indicated, there was a tremendous lack of knowledge of the availability of such international protection of human rights.

8. With respect to section I (c) of the list of issues regarding the legislation referred to in paragraph 17 of the report (CCPR/C/42/Add.7), he pointed out that Act No. 33 had been enacted in 1974, not 1984, and assured the Committee that the reform had indeed been beneficial to individuals, since it had speeded up administrative procedures and provided new administrative remedies.

9. With reference to section I (d), he pointed out that while Act No. 2 of 1984 had established the mandatory teaching of human rights in all the schools of the country, it had never been put into effect. The Ministry of Education under the new Government, however, had since 1989 been working, with the assistance also of non-governmental organizations involved in human rights, to promote the teaching about human rights, from the primary schools through the universities.

10. Furthermore, the Government, in pursuance of resolution 1990/58 on advisory services in the matter of human rights and resolution 1990/59 on voluntary contribution funds for advisory services and technical assistance in the matter of human rights, had requested technical assistance and advice from the United Nations Centre for Human Rights, especially with regard to the administration of justice in Panama.

/...

11. Mr. PRADO VALLEJO, welcoming the particularly distinguished delegation from Panama, nevertheless observed that the two parts of the report before the Committee, from both the former and the current Government, were incomplete and had not followed the guidelines. He understood the problems in Panama, however, and it was clear that there was now a new will in the country to comply with the Covenant. He himself, as a member of several high-level Inter-American human rights commissions of inquiry in Panama had met, both before and after the invasion, with high Panamanian officials and could attest to the fact that the climate was indeed different. There was now, for instance, freedom of the press and a determination to respect the results of popular elections.

12. In the interest of a constructive dialogue on the successes and difficulties experienced in Panama, he thought it important to give a general review of the situation in the country. President Endara, earlier prevented by General Noriega from taking office, had taken power on 20 December 1989, just before the invasion by United States forces. Consequently, a legitimate government had existed before the invasion, as had the country's domestic human rights legislation and the provisions of the Covenant and other international human rights instruments.

13. What had happened after the new Government took power, however, was distressing. Arrests and political persecutions had become widespread: many citizens had been dragged from their homes and detained unlawfully, without detention orders from a competent authority and on no specific charges, they had been denied the right to defend themselves, and had been subjected to violent treatment. Worse yet, the arrests had been carried out largely by members of the United States Canal Zone military forces, allegedly at the request of the Government but certainly with the connivance and consent of the authorities. Anyone who had opposed the United States invasion, who had supported Noriega, or who had served in the Defence Force was considered an enemy. It was true that General Noriega had been a Fascist dictator; but Noriega was an accident in the history of Panama, whereas legal norms were permanent. It was therefore legitimate to ask what steps the Government should have taken to prevent such monstrous violations of human rights in Panama after the invasion and why steps had not been taken. As a member of an Inter-American commission of inquiry in Panama, he had personally received a formal statement from Mr. Cruz, as his country's Attorney-General, that the Government had never authorized or requested United States military assistance in any arbitrary detentions or violations. Why, then, did they continue?

14. Moreover, it should be noted that the Government had acquiesced in the invasion by the United States, even though it violated the Charter of the Organization of American States and international law, being a failure to seek a peaceful solution, an intervention in internal affairs and a denial of the legitimate exercise of self-determination by the people of Panama.

/...

(Mr. Prado Vallejo)

15. The most serious human rights violations occurred after President Endara had taken office. There had been, for instance, the wholesale destruction of entire neighbourhoods in Panama City, a virtual genocide with sophisticated weapons. On the basis of data compiled by the Inter-American commission sent to Panama - which differed from the Government's data - as many as 2,000 had died or disappeared, 15,000 families had been left homeless and were still living in schools or old army bases around the Chorillos district, and 5,000 had been detained in military barracks with government consent, in open violation of the Covenant. Despite the large number of disappeared persons, virtually no investigations had been made and the proceedings, if any, had been summary and violent. In Colón, the second city of Panama, 2,000 had been detained under the same circumstances. Eleven mass graves had been discovered. More than a year after the invasion, only 20 per cent of the Chorillos sector had been reconstructed with partial United States aid, where full aid had been promised. Thousands of refugees were living in various localities in sub-human conditions. To his knowledge no measures had been taken to prevent the situation just described, but he would appreciate information about any government action that might have been taken.

16. Unfortunately, in addition to the lack of individual protection and the material damage, a series of measures had been enacted that violated the Covenant, such as Act No. 25 revoking all the hard-gained social rights of workers; the property of the allies of Noriega had been confiscated, orders had been issued for detentions on political grounds, the rules of asylum had been violated by refusals to give safe conduct passes to persons in embassies, and peaceful demonstrations, which had been termed "anti-democratic" demonstrations, had been prohibited, with the further decree that civil servants participating in such demonstrations would be immediately dismissed. There was, consequently, juridical insecurity in Panama as well as political insecurity.

17. Immediately after the invasion, 16,000 denunciations had been filed against 35,000 members of the previous Government, and it had been decided that a simple denunciation was sufficient grounds for freezing the assets and seizing the property of the person accused. One hundred appeals on the ground of unconstitutionality were currently before the Supreme Court, but none had been acted on. Therefore, justice was being denied and a kind of judicial terrorism reigned.

18. Moreover, there was also a lack of public safety. The Government was not in a position to maintain public order because of the overhaul of the police force, not even in the case of student demonstrations. Under the circumstances, private security forces equipped with heavy weapons had been set up. The Panamanian police, generally unarmed, sought to maintain public order in joint patrols with armed United States military personnel, which was against Panamanian law. In the recent attempted coup, the Government had had to call on the United States military for help. In short, one year after the invasion, there was still a foreign presence in Panama and it appeared that it

/...

(Mr. Prado Vallejo)

would last indefinitely. In such a situation, the Covenant could not be enforced.

19. He had felt obliged to draw that painful picture of the situation because the list of issues was not comprehensive enough, and he believed it would allow the Committee to examine better how the Covenant was being applied. He emphasized that Panama was a country with which his own had always had very close ties and shared common struggles.

20. Mr. AGUILAR recalled from that from 1959 to 1989, Panama had been governed by the army, and that the latter part of that 30-year period had brought the country much tragedy. Constitutional reform was currently under way and he would appreciate more information about it, including details on the abolition of the army, and the establishment of a police force responsible for national security. As Mr. Prado Vallejo had said, the police force might be unable to carry out some of the functions which it should be performing, but that was due to the unfortunate situation that had culminated in the events of December 1989. He believed that it was an interesting and valid approach to disband the defence forces, and requested further information.

21. Mr. SADI welcomed the return of democracy to Panama and asked whether he was correct in believing that no specific legal provisions had been adopted to incorporate the Covenant into Panamanian law. Paragraph 5 of the report stated that the Covenant had the status of municipal law and might be invoked in the courts of law by any citizen, but no details had been provided on how that had come about. He wondered whether it was merely an academic notion that had yet to be specifically tested before a Panamanian court and asked whether the Government would consider seeking a declaratory judgement on the status of the Covenant from the country's highest court.

22. Mr. MAVROMMATIS said that, as had already been pointed out, the reports submitted were neither in the form which the Committee would have wished, nor were they sufficiently detailed. It was important to know, however, whether the present Government stood by the content of the report submitted by the previous dictatorial government.

23. For his part, he did not believe that the situation in Panama was quite as dire as Mr. Prado Vallejo had described it. He, too, had visited Panama several times for professional reasons, and had seen at first hand the efforts of the new Government to improve the situation. He had discussed human rights issues with the Government at the highest levels, and had confidence in the sincerity of the Government's intentions. He would welcome more details on the Government's plans and achievements with respect to amendment of the Constitution and changes in the judiciary. He also sought the delegation's views on whether the presence of the United States was still very evident.

/...

24. **Mr. MYULLERSON** said that taking into account the time which had passed, and the events which had taken place, since the submission of the first report, and the shortness and sparsity of the second one, the Committee was entirely justified in seeking further clarifications on all aspects of the Covenant. He wished to know whether the Covenant and the Optional Protocol were well known in Panama. The Constitution stated that the Covenant was fully valid but gave no information on what had actually been done to give practical effect to its provisions.

25. There had been gross violations of human rights under the Noriega regime, and he wondered why people had not turned to the courts to enforce their rights under the Covenant. While Panama was a party to the Optional Protocol and violations of human rights had occurred and were still occurring, there were no communications before the Committee on such violations. He wondered why individual Panamanians whose rights had been violated were not invoking their rights under the Covenant and submitting communications to the Committee.

26. A detailed explanation of how *amparo* operated would be appreciated. Specifically, he wished to know whether *amparo* could be invoked in connection with the violation of rights enshrined in the Covenant, before what court an action would be instituted and what remedy could be ordered (for example, an order to desist from the violation, compensation, or a change in the law). He also asked how often the right of *amparo* had been exercised by individuals in Panama and sought information on the relationship between habeas corpus and *amparo*, and on whether a detainee could in fact claim both of them.

27. **Mr. EL-SHAFEI** agreed with earlier speakers that both reports before the Committee were deficient. However, the report in document CCPR/C/42/Add.11 did list a number of positive steps that had been taken after the change of Government: restoration of the independence of the judiciary and of the public prosecutor's office, restoration of judicial guarantees laid down in the Constitution, the repeal of undue restrictions on *amparo*, and recognition of the jurisdiction of the Inter-American Court of Human Rights. The Committee would welcome more information on all of those points.

28. Turning to document CCPR/C/42/Add.7, where it was stated in paragraph 17 that Act No. 33 of 1974 had eliminated the right to transfer a case to a higher jurisdiction in matters relating to administrative policy, he asked whether the right of appeal against the decision of the administrative court still existed. Paragraph 20 of that document, quoting article 203 of the Constitution which dealt with the constitutional and legal functions of the Supreme Court of Justice, said that parties might make a notification only once in each type of court. He asked for an explanation of that procedure.

29. **Mrs. HIGGINS** expressed regret that in preparing the additional report in document CCPR/C/42/Add.7, the new Government had not followed the Committee's guidelines. More detail was required. The same applied to the 1988 report (CCPR/C/42/Add.7), extensive parts of which referred the reader back to an addendum to the initial report which the Committee had requested. Checking

/...

(Mrs. Higgins)

that addendum, however, she had found that in many cases no information was given there, and in consequence there were large areas of Panamian law and practice about which the Committee had been left in the dark. She very much hoped that as it made a new beginning Panama would enable the Committee to piece together a picture relating to each of the articles of the Covenant, so that the Committee could help to foster the progress which it believed the Panamian Government was determined to make.

30. She had appreciated the frankness of Mr. Cruz in stating that the Covenant was not well known in Panama. Together the Committee and Panama should try to identify what could be done, and she therefore suggested that the delegation should give information on the plans made to ensure that the existing remedies, namely, the possibility of addressing individual communications to the Committee under the Optional Protocol or invoking the Covenant before the courts, were known to the people.

31. While noting that a new Government was now in place, she emphasized that under international law it was the State that was responsible under the Covenant. The Committee would not, therefore, be able to ignore events which had taken place since the consideration of Panama's initial report in 1984.

32. In a transition from dictatorship to democracy, difficulties often arose in striking a proper balance between the need to promote human rights by punishing past violations, on the one hand, and the need for reconciliation for the future, on the other. In the case of Panama, the Committee was aware of anxiety in some quarters that those who had been associated with past repression might not obtain fair treatment under the current regime. She asked for information on the Government's policy in that regard. The Attorney-General had announced an investigation into offences involving infringement of freedom of expression, and she wondered whether other, more comprehensive investigations were planned.

33. Mr. WENNERGREN said that he, too, was disappointed that the reports were not in the form the Committee would have wished, although he understood the special circumstances in which they had been drawn up. He would welcome details about the Administrative Code in Panama, and, specifically, on the safeguards it offered to individuals.

34. Mr. SERRANO CALDERA said he shared the concerns expressed by previous speakers; the report submitted by Panama did not deal with many important points and left a number of doubts concerning the constitutional and legal framework guaranteeing the enjoyment of human rights. In connection with section I of the list of issues concerning Panama's second periodic report, he noted that the representative of Panama had said that the Covenant had been incorporated into the Panamanian Constitution and had in fact been given priority over the latter; he wondered where that was stated in the country's legislation. He also wondered whether any appeals had been made under the Covenant, for example, to the Supreme Court of Justice, and if so what the

/...

outcome had been. He would like to know, further, what plans the Government had to safeguard human rights in practice.

35. Mr. LALLAH said he agreed with previous speakers that the two reports submitted did not provide the basis for a constructive dialogue; he hoped, however, that progress could be made on the basis of the answers provided by the representative of Panama to the Committee's questions.

36. It appeared from the fact that the Committee had received no communications under the Optional Protocol that neither the Covenant nor the Optional Protocol were well known in Panama; he asked what steps would be taken to make them better known and more fully utilized. He wondered also to what extent the people, especially the poor, had access to the courts and to legal assistance. Referring to article 2 (3) (a) of the Covenant, he asked for information about the laws and regulations applying to the police, and, specifically, whether the police were subject to the same standards as those applying to civilian authorities. He also asked whether foreign troops outside the Panama Canal zone were subject to Panamanian jurisdiction and what legal recourse was available if those troops committed violations of human rights.

37. Mr. Aguilar (Vice-Chairman) took the Chair.

38. Mr. CRUZ (Panama) said that there was indeed a lack of knowledge of the Covenant in Panama, just as there seemed to be a lack of knowledge among Committee members about the human rights situation in Panama; the responsibility in both cases rested with his Government. He hoped, however, that it would be possible to begin to improve that situation through the current dialogue. He hoped also that the third report to be submitted by Panama would resolve the problems Committee members had referred to.

39. It was perhaps because of the lack of knowledge of the human rights situation in his country that some members of the Committee had an inaccurate image of Panama. The United States presence in Panama predated even the separation of Panama from Colombia; the military intervention of 20 December 1989, although uninvited, was a reality. His Government's chief concern was for the future of Panama and the consolidation of democracy there. Achievement of the latter aim required a reconciliation of the conflicting elements within the country.

40. Replying to the question asked by Mr. Prado Vallejo concerning extra-legal arrests, he said that during the United States invasion many people had been detained by the United States forces. As soon as those people had been turned over to the Government, all those against whom there were no charges had been released. All those who were still under detention had been charged with offences and were in fact represented by legal counsel. They were not being ill-treated.

/...

(Mr. Cruz, Panama)

41. Before 1989, Panama had existed for many years under a military dictatorship; there was a great ignorance of penal law in the country because that law had fallen into complete neglect. As soon as the new Government had come into office, the judiciary and the Prosecutor's Office had been reorganized; over the last 14 months, 40,000 criminal cases had been processed, and many of those charged in criminal cases had been turned over to the courts. He did not wish to imply that the system was functioning perfectly; sometimes detentions he himself had ordered were revoked or overruled by the Supreme Court. But he was glad when that happened because it was an indication that the system was functioning properly.

42. Responding to Mr. Prado Vallejo's question concerning the prosecution of former officials, he said that the Government was under pressure both to be more lenient and to be more severe. It was the task of the Prosecutor's Office to strike a balance between those extremes, and in following that course the Government might be said to have taken another first step towards reconciliation among Panamanians. He himself continued to believe that over-hasty justice was as bad as justice delayed.

43. Replying to another question, he said that the United States military presence in Panama had been dwindling steadily and it was hoped that it would soon be a thing of the past.

44. A question had been asked concerning the distinction between habeas corpus and amparo. Both were intended as guarantees of human rights, but the first was the specific remedy guaranteeing individual freedom and was the only remedy for which detained persons could apply.

45. With respect to the number of constitutional challenges still pending, of which there were 43 and not 100, he said that machinery had been established to deal with them and it was hoped that all the actions would proceed shortly to the Supreme Court.

46. Turning to requests for information about the codes in force, he said that the oldest and most important of them was the Administrative Code, but that had fallen into disuse because it had been superseded by other legislation. An office had been established under a 1974 law to investigate administrative errors, but the law had been much criticized and the current Government had proposed that it should be abolished. References to the Administrative Code were therefore now virtually academic. Access to the courts, and to legal assistance, especially by the poorest members of society, was a complicated problem, as it was linked to the other problems he had mentioned earlier which were the legacy of many years of military dictatorship. Provisions for access to free legal aid had been made in legislation enacted in 1983, but practical arrangements still had to be worked out. No police code existed, but the Government was working on a series of regulations to ensure proper conduct by the police, especially in the use of firearms. What was important was that the political will now existed on the

/...

part of the Government to ensure that the administration of justice was honest and lawful.

47. Much remained to be done, of course, for example in establishing the conditions for membership in the judiciary. The new Administration was continuing its efforts in that direction; only recently it had introduced a new Legal Code and begun working on regulations to ensure the independence of the judiciary.

48. Mr. PRADO VALLEJO welcomed the statements by Mr. Cruz that no Panamanian had called for the invasion, that there was now a firm policy to consolidate democracy and embark upon national reconstruction, and a political will to protect human rights, all of which demonstrated the good faith of the Government of Panama. When referring earlier to the problems of detainees, he had meant those non-Panamanians held in military barracks, and while it was possible to disagree over the means used to get rid of General Noriega, there was no disagreement over the need to get rid of him. Under current legislation, full sovereignty over the Panama Canal was to be handed to the Government of Panama by the year 2000, but he had learned from certain outside sources that because Panama's political institutions were so weak that handover might not happen. He sought assurance that it would.

49. Mr. CRUZ (Panama), returning to a question that had been asked in connection with section I (a) of the list of issues, said that it was generally accepted in Panama that any treaty signed by the Government could lead to a constitutional challenge on grounds that it was supranational, but the Supreme Court was now composed of distinguished jurists who were familiar with human rights legislation. As for the Panama Canal Treaty, its provisions would be respected and complied with so that in the year 2000 United States armed forces would leave. The previous military dictatorship had demonstrated that it was not capable of guaranteeing that outcome, and for that reason it was necessary to consolidate democracy in Panama.

Self-determination (article 1 of the Covenant) (section II of the list of issues)

50. The CHAIRMAN read out section II of the list of issues concerning the second periodic report of Panama, namely: (a) whether Panama had taken any measures to prevent public and private support for the apartheid regime in South Africa; and (b) Panama's position with regard to the rights of the Palestinian people, and whether the policy outlined in paragraphs 11 and 12 of the report still applied.

51. Mr. PEREIRA BURGOS (Panama) said that the Government of Panama had voted in favour of all United Nations resolutions against apartheid, including those which involved the application of sanctions. Diplomatic relations with South Africa had been suspended in 1985, and although the situation was now somewhat different the Government of South Africa had not changed its attitude

(Mr. Pereira Burgos, Panama)

sufficiently for normal relations to be re-established. The Panamanian authorities were considering the imposition of measures to punish violations of economic sanctions against South Africa; they would include measures against Panamanian-registered shipping. During its consideration of the initial report submitted by the Government of Panama, the Committee had expressed its satisfaction with the position taken with respect to apartheid, and no further action had been either requested or suggested.

52. With respect to the question asked under section II (b) of the list of issues, he said that the Government of Panama maintained diplomatic relations with Arab States as well as with Israel, and its position was that Israel should withdraw from the occupied territories and that there should be recognition of and security for the State of Israel as part of an overall Middle East peace settlement.

53. Mr. SADI asked if the Government of Panama regarded self-determination in its domestic dimension as requiring a continuing system of democratic parliamentary rule.

54. Mr. MYULLERSON requested clarification of Panama's position on the principle of non-interference. It was his belief that the countries of Latin America had always been active in strengthening the principle of non-interference, and although the overthrow of General Noriega as a result of intervention had resulted in the replacement of a dictator by a democratic government, that was not always what happened. More often than not, the result of such intervention was the imposition of a dictatorship.

55. Mr. Pocar (Chairman) resumed the Chair.

56. Mrs. HIGGINS asked when the next national elections were due in Panama, and whether any special measures were envisaged to ensure that in those elections there was a proper choice between political parties.

57. Mr. PRADO VALLEJO said that there was sometimes a degree of misunderstanding in Panama regarding the assistance which American countries might have provided through the Organization of American States. There were no grounds for allegations which he had heard that Latin America had turned its back on Panama in its struggle against General Noriega. Mr. Cruz had more or less suggested the same. The countries of Latin America had to uphold the principle of non-intervention. The Organization of American States had sent to Panama a commission composed of foreign ministers, which had spent several weeks trying to achieve national reconciliation, to induce General Noriega to relinquish power and to install Mr. Endara, who had won the election. The OAS mission had failed, but not for lack of trying.

58. Mr. CRUZ (Panama) said that there had to be a balance between the principle of non-interference and the principle of the self-determination of peoples. The next national elections in Panama were due to be held in

/...

May 1994, five years after the last ones, and the only measure that should be adopted in order to ensure that they were held as democratically as possible would be the drawing up of a new electoral code.

59. Mr. PEREIRA BURGOS (Panama) said that the question was to determine the limits of non-interference and self-determination respectively, and to determine how both concepts applied in the domestic and international legal contexts. Historically, the countries of Latin America had supported the principle of non-interference as a doctrine aimed at preventing interference in the region by the United States, but the principle could not be applied equally to dictatorships and democracies. For example, electoral fraud could not be permitted on the ground that the principle of non-interference precluded any action against it. After all, the Human Rights Committee itself existed more to defend the rights of the citizen than the rights of Governments and States. The Government of Panama regularly supported every initiative in defence of human rights without giving thought to votes that might be lost. It did not oppose the competence or jurisdiction of any United Nations human rights body. It sought to defend human rights in the broadest terms everywhere, and took pride in its human rights record. It had a binding rule that it did not recognize any Government that resulted from a military coup or from electoral fraud.

60. The United Nations had recently authorized military intervention in the Gulf, and the Government of Panama had hoped that the Organization of American States might have taken similar action with respect to Panama. The Government of Panama had told the Organization of American States that it would always strive within that body to ensure that Governments which were not democratic would not be able to impose their will on people who were making free use of their right to self-determination.

The meeting rose at 1.05 p.m.

UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1052
10 April 1991

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE 1052nd MEETING

Held at Headquarters, New York,
on Thursday, 4 April 1991, at 3 p.m.

Chairman: Mr. POCAR

later: Mr. DIMITRIJEVIĆ (Vice-Chairman)

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Second periodic report of Panama (*continued*)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (*continued*)

Second periodic report of Panama (*continued*) (CCPR/C/42/Add.7 and Add.11)

1. At the invitation of the Chairman, Mr. Cruz, Ms. Pardo and Mr. Pereira (Panama) took places at the Committee table.

State of emergency (article 4 of the Covenant) (section III of the list of issues)

2. The CHAIRMAN read out section III of the list of issues concerning the second periodic report of Panama, namely: (a) rights suspended during any state of emergency which might have been proclaimed since the consideration of the initial report in 1984; (b) clarification on whether the guarantee against confiscation of property could be suspended and, if so, whether any persons had been deprived of their property since the previous report; and (c) the meaning of Decree No. 50 of February 1990, repealing the article placing restrictions on the judicial remedy of *amparo*.

3. Mr. CRUZ (Panama) said, with respect to section III (a), that a state of emergency had been declared twice since 1984: once in 1987 and once in 1988. On both occasions, the Government had suspended all the guarantees that were subject to suspension under the provisions concerning states of emergency contained in article 51 of the Constitution. Concerning section III (b), he said that although the guarantee of private property acquired in accordance with the law could be suspended in a state of emergency, the guarantee against confiscation of property could not be suspended even in that circumstance. He replied to section III (c) by noting that article 2606 of the Judicial Code had prohibited the exercise of the remedy of *amparo* against decisions by judicial officials. That restriction had been criticized, since the remedy of *amparo* should be available to challenge not only arbitrary laws and decisions of the executive and legislative branches of government, but also those of the judiciary. Decree No. 50 of February 1990 provided that the remedy of *amparo* could be exercised against judicial decisions.

4. Mr. ANDO said that Panama had a history of successive interventions by foreign powers. Although intervention was beyond the Panamanian Government's control, it did not relieve the Government of its responsibility to ensure the protection of human rights. He welcomed the new Government's political will to strengthen its protection of human rights, and said that the reinforcement of the country's social structure would be an essential step towards safeguarding those rights. With respect to the two states of emergency which had been declared in Panama since 1984, he asked whether the Secretary-General of the United Nations had received formal notification of those situations.

/...

5. Mr. PRADO VALLEJO noted that under article 4 of the Covenant, a formally declared state of emergency was the only circumstance under which certain rights could be temporarily suspended. In the period following the December 1989 invasion of Panama by United States forces, almost all constitutional guarantees had been suspended under emergency measures, which had included arbitrary detentions without trial. Since Panama had therefore experienced a de facto state of emergency, he wondered whether there had been any formal decree suspending constitutional rights, if so, which rights had been suspended and for how long and whether the Committee had been properly informed through the Secretary-General in accordance with the requirements of article 4 of the Covenant.

6. Mr. CRUZ (Panama) said it was his understanding that the Government had notified the Secretary-General on the two occasions when a state of emergency had been declared in the period between 1984 and 20 December 1989; however, since he had not had direct access to such information prior to 20 December 1989, he could not confirm its accuracy. Following the United States invasion, a state of war had existed between the United States and General Noriega; the situation had not been declared a state of emergency because it had not resulted from an internal disturbance. The Government had considered that the suspension of constitutional guarantees under such circumstances would have increased the danger of human rights violations. As soon as the Government had reorganized itself after the invasion, it had functioned with all constitutional guarantees in force. In addition, the remedies of habeas corpus and amparo, which had been restricted before 20 December 1989, had been made fully applicable.

7. Mr. PRADO VALLEJO said that the conditions of respect for human rights described by the Panamanian representative had characterized the situation some time after the United States invasion. However, in the months immediately following the invasion, a state of war could not have existed unless there had been a formal declaration of war. Moreover, if Panama had indeed been at war, the provisions of the Geneva Conventions would have applied. The serious human rights violations which had been reported by various organizations were therefore in contravention of the Covenant, since there had been no decree declaring a state of emergency and suspending constitutional guarantees.

8. Mr. CRUZ (Panama) said he understood that the purpose of the hearing was not to discuss whether Panama had been at war, but to consider its second periodic report in order to monitor its compliance with the provisions of the Covenant. The important point was that the Panamanian Government had ensured full respect for human rights, without suspending constitutional guarantees, as soon as circumstances beyond its control had allowed it to do so. Its decision not to declare a state of emergency had helped to preserve the rights of Panamanians and of foreigners who were in Panama's territory at the time of the invasion.

/...

Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26 of the Covenant) (section IV of the list of issues)

9. The CHAIRMAN read out section IV of the list of issues, concerning: (a) measures taken since the consideration of the initial report to improve the status of women, particularly in rural areas, and (b) the respects in which the rights of aliens, other than political rights, were restricted as compared with the rights of citizens.

10. Ms. PARDO (Panama) said, with respect to section IV (a), that the Panamanian Constitution contained articles prohibiting discrimination on the basis of sex, establishing equality between men and women as citizens, prohibiting the formation of political parties whose membership was restricted on the basis of sex and providing special protection for working women during and after pregnancy. Additional provisions concerning working women were set forth in the Labour Code.

11. A number of initiatives had been taken for the advancement of women in Panama. Protection of the rights of women and of the family was a function of the General Directorate for Social Welfare of the Ministry of Labour and Social Welfare, and its 1991 work plan included a series of community activities focusing on the protection of women, children and families, in which women would participate directly at the local level. In rural areas, the Ministry of Agricultural Development was establishing women's organizations that were financially supported by a national organization for rural development. Although there was a clear political will on the part of the Government to promote the advancement of women, it was encountering a number of obstacles both economic and cultural; the latter, in particular, would not be easily overcome.

12. With respect to the treatment of aliens, the Constitution established the equality of Panamanians and aliens before the law, although aliens did not have political rights and were subject to special conditions in the exercise of certain activities. In addition, certain public service posts were reserved for Panamanian nationals. The Government did not regard that practice as discriminatory but as a means of safeguarding the integrity of Panamanian nationality.

13. Mr. ANDO noted that paragraph 29 of the report (CCPR/C/42/Add.7) indicated that Panama's labour legislation excluded women from certain categories of work, and asked for details on the types of posts that were not open to women.

14. Mr. MAVROMMATIS said that, in view of the recent change of government in Panama, the Committee would need another report from the country in the near future, containing information on the changes being planned by the new Government to implement its declared intention of entrenching democracy in Panama. He asked the delegation to elaborate on the obstacles which stood in the way of women's advancement, such as illiteracy, the nation's history of

/...

authoritarian regimes, the economic situation and the devastation caused by war and internal disturbances. More information was also needed on the treatment of aliens, particularly those of Chinese origin. It appeared that under the previous regime, large numbers of aliens had come to Panama, in most cases from countries undergoing a transitional period in the hope of securing immigration permits. He asked for updated information on the situation of such aliens.

15. Mr. WENNERGREN said he had heard allegations that the police in Panama had treated aliens of Chinese origin in a discriminatory and sometimes abusive manner. He wished to know what could be done for aliens who had suffered such treatment and for the ethnic Chinese population as a whole. In addition, the Constitution provided that every person was free to exercise any profession or trade subject to regulations established by law. He wondered whether a person's work activities could be restricted simply on the grounds that that person was an alien.

16. Mr. SADI said that it would, indeed, be appropriate for the new Government to submit a further report, since it could not be held responsible for the report submitted by its predecessor.

17. With regard to discrimination, he noted from paragraph 45 of the second periodic report (CCPR/C/42/Add.7) that freedom to profess all religions was subject only to respect for Christian morality and public policy, and that Catholicism was recognized as being the religion of the majority of Panamanians. He wondered whether the special status accorded to Christianity did not in fact constitute discrimination against other religions. Another area in which there seemed to be discrimination was divorce, since it emerged from paragraph 49 of the report that adultery constituted grounds for divorce if the guilty party was the wife, but in the case of the husband the adultery must be "aggravated".

18. Finally, he expressed misgivings about the apparent double standard regarding citizenship whereby Panamanians who were citizens by birth enjoyed a higher status than those who were not; that was clearly contrary to the spirit, if not the letter, of the Covenant.

19. Mr. PRADO VALLEJO said that there was probably less discrimination against women in Panama than in any other Latin American country, and he was pleased to note the efforts to bring about greater equality. At the same time, he agreed with Mr. Mavrommatis and Mr. Sadi on the need for a supplementary report.

20. Mr. LALLAH said that few answers were in fact forthcoming in the report to issues regarding equality between men and women raised by the first periodic report. He was very interested to learn about the programme of affirmative action on behalf of women, but wondered why, if priority was given to such programmes, adequate resources were not made available to implement them.

/...

(Mr. Lallah)

21. He was puzzled by what was meant by the term "aggravated adultery": did it mean that the husband must be discovered *in flagrante delicto*?

22. In connection with property rights, he asked whether women enjoyed equal participation in respect of the disposal of conjugal property.

23. Mr. CRUZ (Panama) said that his delegation noted the concerns of members of the Committee and would try to address them in its replies and in the Government's next report. He pointed out that earlier reports had concentrated on legislation and constitutional guarantees, and had failed to give a true picture of the real situation regarding human rights in Panama.

24. The allocation of resources to social programmes had been hampered over the years by the previous Government's extravagant military spending, which had saddled the country with a serious debt burden.

25. With regard to capital punishment, he said that the death penalty was prohibited by article 30 of the Constitution.

26. In connection with the Chinese population, he said that in the last years of the dictatorship large sums of money had been corruptly disbursed to Chinese nationals - many of whom had also been granted Panamanian citizenship illegally - and others. The practice had been so widespread that the new Government had recently established a Commission to investigate the problem, but its findings were not yet available.

27. The Constitution provided, in article 40, that any person was free to exercise any profession or trade, subject to the regulations established by law in respect of competence, morality, social welfare and social security, professional affiliation, public health, union membership and compulsory dues, and no taxes or assessments were required for the exercise of the liberal professions, trades and arts. In the case of the legal profession, only Panamanian nationals - whether by birth or by adoption - were entitled to practise advocacy, and the same was true of retail trading. Article 35 of the Constitution did indeed recognize the special position of the Catholic Church in Panama, but no restrictions were placed on the profession of other faiths, which enjoyed full status in law and were in no way subordinate to the Catholic Church.

28. The legal grounds for divorce had been amended and the Civil Code now placed men and women on an equal footing before the law in that regard.

29. Turning to the question of citizenship, he said that the only difference between Panamanians who were nationals by birth and those who were nationals by adoption was that the President of the Republic, judges of the Supreme Court, the Attorney-General and the Comptroller General must be Panamanian by birth.

/...

30. Men and women enjoyed equal rights with regard to matrimonial property and inheritance, and women were fully entitled to enter into contracts on reaching the age of majority, which was 18 years for both sexes.

31. Mr. PRADO VALLEJO said that since the invasion there had been many cases of persons seeking asylum in foreign embassies in Panama, some of them military personnel accused of serious offences committed when they were serving in the former President's National Guard. The new Government's reluctance to grant safe conduct to such persons was understandable but, if the persons concerned were recognized as political refugees by the foreign Government in whose embassy they had sought refuge, refusal to do so would contravene international conventions to which Panama was a Party. In the case of common criminals, of course, the suspect could subsequently be extradited to Panama to face charges. The current impasse with regard to the status of asylum seekers was complicating Panama's relations with neighbouring States.

32. Mr. CRUZ (Panama) said that the Panamanian Foreign Ministry was greatly concerned by the problem of asylum seekers. Panama acknowledged the right to asylum, but it was up to the country of asylum to clarify the legal situation, which in the case of some of the countries concerned remained unresolved. The Panamanian Government had suggested recourse to machinery established under the Charter of the Organization of American States, but that had not so far proved possible. He hoped that a solution would be found in the near future.

Right to life (article 6 of the Covenant) (section V of the list of issues)

33. The CHAIRMAN read out section V of the list of issues concerning the second periodic report of Panama, namely: (a) complaints during the reporting period concerning alleged disappearances or killings caused by the police or the security forces or undertaken with their support and results of investigations by the authorities of any such allegations; (b) rules and regulations governing the use of firearms by the police and security forces, violations of those rules and regulations and measures taken to prevent their recurrence; (c) steps taken to expand public health facilities and health care, particularly in rural areas; (d) the current rate of infant mortality and measures taken to reduce that rate; and (e) measures taken by the Panamanian Government to prevent the spread of the HIV virus (AIDS).

34. Mr. CRUZ said, in connection with section V (a) and (b), that before the invasion of December 1989 there had indeed been cases of disappearances and killings, for which members of the armed forces had been blamed: those cases had been investigated. For example, on 3 October 1989 a group of military personnel had staged an uprising against the Noriega Government. After surrendering, they had been imprisoned and subsequently executed by their comrades-in-arms, some of whom had now sought asylum in foreign embassies. It should be pointed out that, under the previous regime, investigations into deaths and disappearances had often been manipulated in order to acquit the accused. The Government had proposed establishing a special prosecutor's

/...

(Mr. Cruz, Panama)

office to investigate such cases, and other cases relating to offences committed by members of the armed forces, including some which involved the unauthorized and excessive use of firearms, were being referred to the competent courts. The need for clear-cut rules on the use of such weapons by police and the security forces had been recognized by the new Government, and it was hoped that new regulations would soon be introduced.

35. Mr. PEREIRA (Panama), referring to section V (c), (d) and (e) of the list of issues, said that tuberculosis, malaria and most other endemic tropical diseases and infectious parasitic diseases had been brought under control. There had been a dual public health system under the former military regime - a health insurance scheme financed by employer/employee contributions, and state health insurance supposedly financed by the State. In reality, the latter, while claiming to offer greater benefits, had drawn on the resources and infrastructure of the employer/employee health insurance programme. The result was that the financial reserves of that programme had been depleted, and its facilities, overextended. The state health system, meanwhile, had been left to deteriorate. Representatives of the former regime, including one who was a qualified physician, had never disclosed those facts to the Committee. The new Government was taking steps to restore the health insurance system and would submit official long-term public health plans to the Committee shortly.

36. The infant mortality and live birth rates reflected improvements in the Panamanian health situation. For example, the live birth rate, which had remained essentially unchanged from 1985 to 1989 at between 85 and 90 per cent was currently 91.6 per cent in urban areas. Admittedly, in rural areas, it was somewhat below the 1984 rate. The infant mortality rate in urban areas was 22-24 per 1,000 live births and, in rural areas, 26-28, which meant that a national average was 26. That was still high but not as high as in neighbouring countries. The incidence of cholera was not a problem in Panama, where the drinking water supply, the sewage system and other health conditions were more advanced than in neighbouring countries.

37. Public health had been a priority ever since the nation had attained independence and the public health system had been developed over the years. Unfortunately the solid health infrastructure had been undermined by the wholesale squandering of resources by the previous Government.

38. Measures to prevent the spread of the human immunodeficiency (HIV) virus focused on a public information campaign, including publicity about the use of condoms. Because of its location, Panama was able to receive and make use of television and radio programmes about AIDS from the United States, Colombia and Costa Rica. One problem peculiar to Panama was that it served as a transit point between North and South America for thousands of persons - United States soldiers, and tourists of all nationalities.

/...

39. Mr. WAKO said that the presence of such a high-level delegation compensated for the fact that the Panamanian report did not strictly conform to the Committee's guidelines. Within the context of the right to life, he requested figures on casualties resulting from both the 1987 riots described in paragraph 32 of the report (CCPR/C/42/Add.7) and the events of December 1989 (CCPR/C/42/Add.11, para. 15). He wondered, in the latter case, whether excessive use of force by members of the police, army or even invading troops had been investigated and whether the offenders could be held criminally liable. The very large number of civilians who had died, most of them unarmed, aroused suspicion that excessive force might indeed have been used.

40. He would appreciate more substantive details on the regulations governing police conduct, which had entered into force since December 1989, and wondered whether they were in conformity with the United Nations Code of Conduct for Law Enforcement Officials. Information should be provided on how and by whom the regulations were enforced and whether Panama had independent machinery for investigating the use of excessive force by police officers.

41. Mr. SADI asked whether the Panamanian situation had ever been reviewed by the Working Group on Enforced or Involuntary Disappearance or the Special Rapporteur on summary executions. With regard to the right to life, he asked when Panamanian abortion laws considered life to begin. Information would also be appreciated on environmental policy in Panama, on whether Panama had a drug problem and, if so, on the measures taken to control it. Lastly, he wondered whether the new democratic Government was seeking to create jobs for poverty-stricken sectors of Panamanian society.

42. Mr. WENNERGREN, referring to paragraph 15 of document CCPR/C/42/Add.11, asked whether there was a central office responsible for handling questions from the family members of persons who had died during the events of December 1989. Some of those cases might be under investigation by the special prosecutor's office referred to in the report (para. 9 (a)), and it would be helpful if relatives could trace the status of such invesigations through a central office.

43. In conclusion, he wondered whether any measures had been taken to control the spread of the HIV virus by prostitutes.

44. Mrs. HIGGINS asked whether any of the deaths which had occurred in December 1989 had been caused by United States forces and, if so, whether they were subject to local criminal jurisdiction. The Panamanian reports contained very little information concerning articles 6 and 7 of the Covenant. The current report mentioned only that the right to life was guaranteed by article 17 of the Panamanian Constitution (para. 38) and made no mention of article 7 at all. The answers given by the Panamanian delegation had been extremely helpful and she hoped that Committee members' questions, combined with a reading of the Committee's general comments on articles 6 and 7, would serve as useful guidelines for future reports.

/...

45. Mr. MAVROMMATIS said that, under article 6 of the Covenant, the Panamanian Government was duty-bound to investigate the deaths which had taken place in December 1989 - whether they had been brought about by Panamanian forces, Noriega battalions, or United States troops. Those investigations should be followed up by arrangements to provide compensation to victims' families. Care should be exercised in the implementation of measures to prevent the spread of the HIV virus, lest they result in the violation of individual rights, for example, compulsory examinations or the ostracism of patients.

46. Mr. PRADO VALLEJO said that a distinction must be drawn between the period before the invasion and that following. Prior to the invasion there had been many instances of human rights violations involving deaths and disappearances, attributable in part to President Noriega and his regime. Responsibility for those events should, however, be attributed not to specific individuals but to the State as such, which should investigate violations before, during and after the invasion.

47. Attention should be focused in particular on the use of summary execution and on what steps, if any, had been taken to provide compensation to surviving family members of victims. There had reportedly been some 3,000 deaths or disappeances after the invasion. Moreover, the destruction of families had caused serious social problems, including increased crime and homelessness. The United States Agency for International Development had made some aid available, but scarcely enough given the magnitude of the problem. In any event the right to life was in serious jeopardy in Panama. It was clear that further investigation of the situation was required. A further problem was that of mass graves, several of which remained to be opened.

48. It was the responsibility of the State of Panama to find solutions to the horrible circumstances besetting the country. The Government should submit a supplementary report to the Committee covering the points he had raised.

49. Mr. LALLAH endorsed the comments made by other speakers concerning the obligation of the State to investigate the deaths which had occurred and to provide compensation to the families of the victims. He wished to know how great a problem drugs represented in Panama, in terms of the number of deaths caused by them, where they originated, what steps were being taken to discourage drug trafficking, whether drug funds were laundered in Panama, and how closely banks were monitored.

50. Mr. Dimitrijević took the Chair.

51. Mr. CRUZ (Panama) said that the Office of the Attorney-General had responsibility for investigating deaths and disappearances, which it did without specific guidelines from the central Government.

52. The issue of deaths and disappearances had not originated with the events of December 1989 but with the seizure of power by the military Government

/...

in 1968. The Office of the Attorney-General was thus investigating human rights violations which had occurred over a period of 21 years; that represented an overwhelming workload given the resources available. The Office would, of course, investigate violations which had occurred subsequent to December 1989, and the Government had called upon all agencies to cooperate.

53. With regard to compensation, while various figures had been cited, it seemed that the numbers of deaths and disappearances were, in reality, low. On the question of mass graves, it simply was not true that several remained to be investigated. The Government had opened all the mass graves of which it had any knowledge.

54. As a matter of principle, responsibility for compensation lay with the culpable party. The new Government faced claims for compensation from many individuals, not only arising because of loss of life, but also because of confiscation of property. However, the Government simply did not have such vast amounts available to it.

55. With regard to drugs, the Noriega dictatorship had insisted that Panama was only a country of transit. The reality was that, in addition to being a country of transit for cocaine from Colombia, over 60 per cent of young people in Panama used drugs. While drug money was presumably laundered in Panamanian banks, that occurred in every financial centre of the world, including the United States. In fact the new Government was taking action in a range of drug-related areas, and much progress had been made. Drug-related problems were very complex, and not even the United States, with its immense resources, had been able to resolve them. Panama needed international assistance in order to be able to take further action, but the Committee could rest assured that the political will to tackle those problems now existed.

56. Turning to abortion, he said that it was an offence under the Criminal Code, punishable by imprisonment. On the question of AIDS and prostitution, prostitutes were required to undergo medical examinations every three months.

57. Mr. WENNERGREN asked whether women were punished, in practice, for undergoing an abortion.

58. Mr. CRUZ (Panama) said that not only the women but also those performing abortions were frequently punished.

59. Mr. LALLAH said that he did not agree that abortions should be punished in all circumstances.

Treatment of prisoners and other detainees (articles 7 and 10 of the Covenant) (section VI of the list of issues)

60. The CHAIRMAN read out section VI of the list of issues concerning the second periodic report of Panama, regarding: (a) controls instituted to ensure that persons arrested or detained were not subjected to torture or to

(The Chairman)

cruel, inhuman or degrading treatment; (b) arrangements for the supervision of places of detention by the Department of Corrections or the Office of the Attorney-General; and (c) whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with, and how they had been made known to the police, armed forces and prison personnel as well as those responsible for interrogations, and whether the relevant regulations and directives were known and accessible to prisoners.

61. Mr. CRUZ (Panama), referring to section VI (a), said that torture had been the almost exclusive preserve of the military authorities. Now that they had been removed from power, it was a virtual certainty that torture was no longer employed. In addition to ending control of prison establishments by the military, the Government had begun a series of seminars and courses to improve the treatment of prisoners held in penal institutions. Prison conditions in Panama were substandard, owing to the age of prison buildings and tremendous overcrowding, problems which the new Government had not been able to resolve in its 14 months in office. In fact there was a need for a completely new prison infrastructure. The Government had so far devoted its efforts to eliminating any further possibility of inflicting cruel, inhuman or degrading treatment now or in the future.

62. With regard to section VI (b), the Committee should note that under the previous regime no one, not even from the Department of Corrections or the Office of the Attorney-General, had been able to enter prisons without the express authorization of the military. That situation had been rectified by the new Government, with the result that the physical integrity and life of a prisoner were now protected. With regard to section VI (c), copies of the Rules had been provided to the relevant officials, but much still remained to be done in the form of familiarization and training courses, and United Nations assistance would be needed for that purpose.

63. Mr. PRADO VALLEJO said that it was obvious that the treatment of prisoners had improved under the new Government. Nevertheless, given that there had been serious instances of torture and abuse following a peaceful demonstration in August 1990, he asked whether the Government had taken steps to ensure that the police changed their treatment of prisoners. Many of the police officers were, of course, the same as under the previous regime, and seemed to be using force as they had before.

64. Mr. WAKO welcomed the establishment of the National Advisory Commission on the bill relating to the national prison system, and asked whether any prison deaths were due to shortages of food and medical attention, as happened in many third world countries. Further, he inquired whether there was a problem of overcrowding, and what measures were being taken in response.

The meeting rose at 6 p.m.

UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1053
10 April 1991

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE 1053rd MEETING

Held at Headquarters, New York,
on Friday, 5 April 1991, at 10 a.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Panama (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Panama (continued) (CCPR/C/42/Add.7 and Add.11)

1. At the invitation of the Chairman, Mr. Cruz (Panama) took a place at the Committee table.

2. The CHAIRMAN said that the representative of Panama would answer questions held over from section VI of the list of issues.

3. Mr. CRUZ (Panama), referring to section VI (c), said that the new Government had sought from the outset to ensure that judicial officials, members of the Public Prosecutor's Office, the police and all prison personnel were familiar with and applied the United Nations Standard Minimum Rules for the Treatment of Prisoners. The Government hoped, with international assistance, to set up ongoing training seminars on the subject, for the concepts involved had never been enforced under the dictatorship. Currently, all officials and personnel concerned received copies of the legal provisions in question. The relevant regulations and directives were also known and accessible to prisoners. It was not uncommon for detainees, who under the previous regime had been deemed to have no rights, to be interviewed by the media, even in prison. Also, now that prisoners were aware of their rights, they were attempting to stage prison uprisings or demanding better conditions, an indication of the special political climate that now prevailed.

Liberty and security of the person (articles 8 and 9 of the Covenant) (section VII of the list of issues)

4. The CHAIRMAN read out section VII of the list of issues concerning the second periodic report of Panama, namely: (a) with reference to the practice of administratively imposed compulsory labour, whether the planned amendments to the Administrative Code and to Act No. 112 of 1984 had been enacted; (b) whether the Committee's concerns regarding the apparent incompatibility between article 33 of the Constitution and article 9 (1) of the Covenant had been taken into consideration by the Panamanian authorities; (c) information on detention for reasons other than crimes; (d) the maximum period of remand in custody and detention pending trial; (e) how quickly after arrest a person's family was informed and how soon after arrest a person could contact a lawyer; and (f) with reference to paragraph 43 of the report, whether the conditions of payment of damages envisaged in article 129 of the Penal Code were compatible with article 9 (5) of the Covenant, and whether there had been any cases where the State had been required to pay civil damages to such detainees.

5. Mr. CRUZ (Panama), referring to section VII (a), said that Act No. 112 dated from 1974, not 1984. The Administrative Code related only to minor

/...

(Mr. Cruz, Panama)

offences for which the term of imprisonment was one year or less, and such sentences were no longer being applied, with the result that the Administrative Code had effectively fallen into disuse. In any case, the definition of forced or compulsory labour given in article 2 of ILO Convention No. 29 (Forced Labour) excluded work or service performed pursuant to a sentence handed down as part of the judicial process.

6. With reference to section VII (b), he saw no contradiction between article 33 of the Panamanian Constitution and article 9 (1) of the Covenant, and also none between the same article 33 and article 14 of the Covenant, although he recognized that some might perceive an incompatibility there too. Supplementary legislation permitted Supreme Court judges or the Attorney-General to impose penalties on persons who showed disrespect to an official in the act of discharging his official duties, and there might be a conflict in that such penalties were imposed without prior judicial process. However, he could not recollect any case in which those constitutional and legal norms had been enforced, even during the 21 years of military dictatorship.

7. Under article 33 (2), chiefs of public forces could arrest their subordinates without prior trial in order to subdue an insurrection or mutiny or for an infraction of discipline, and under the Defence Forces Act sentences of up to one year's imprisonment had been handed down for insubordination on the part of members of the Defence Forces. However, the Defence Forces Act was being dismantled by the present Government. Under article 33 (3), captains of ships or aircraft could inflict penalties without prior trial in order to repress insurrection or mutiny or to maintain order on board, and to detain temporarily any actual or presumed culprit, when outside of port; it was natural that they should have such powers because it was clearly impossible for a trial to be held on a ship or an aircraft when out of port. The situations envisaged under article 33 of the Constitution were very specific and applied only to exceptional circumstances.

8. Turning to section VII (c) of the list of issues, no one had been detained in Panama during the past 14 months for reasons other than crimes, except for those detained under Act No. 112 for administrative infractions. The Act had been much criticized since its introduction in 1974 because it established a kind of administrative jurisdiction, and he believed that it would shortly be repealed.

9. In answer to section VII (d) of the list of issues, he said that in Panama no distinction was made between remand in custody and detention pending trial. Pre-trial detention applied only to offences carrying prison sentences and could last throughout the investigation and trial process. Detention in other cases would normally last between two and four months, but in view of the large number of cases and the shortage of resources the judicial process did not reach completion within that period. The investigation process alone usually took six or seven months and the trial process, given the possibility

/...

(Mr. Cruz, Panama)

of appeal, could last up to seven years. Delayed justice was a problem for all countries in Central and South America, and in January 1991 the Government of Panama had enacted a law aimed at relieving prison overcrowding and dealing with the long periods of detention by providing alternatives such as house arrest, territorial restriction and the obligation to report regularly to the appropriate authorities.

10. Turning to section VII (e) of the list of issues, he said that from the founding of the Republic in 1903 until 1983, detainees could be held incommunicado until they answered the charges against them. That had not only posed a risk to their physical integrity and even their life, but had also meant that they were obliged to answer the charges made against them without the benefit of legal counsel. When the Panamanian Constitution had been revised in 1983, an article had been inserted - article 22 - stating that all persons placed under arrest must be informed immediately, and in an understandable manner, of the reasons for their arrest, and of their constitutional and corresponding legal rights. Persons accused of committing a crime had the right to be presumed innocent until proven guilty, at a public trial, under due process of law. Whoever was arrested had the right, from that moment, to legal counsel in all police and judicial proceedings. Finally, that matter was to be regulated by law. Unfortunately, it had proved impossible to get the legislative branch of the previous military Government to put the provisions of article 22 into effect. Despite a 1985 ruling by the Supreme Court of Justice declaring unconstitutional all provisions of the Judicial Code of 1917 - still in force at the time - permitting persons to be held incommunicado, the military Government had detained opponents and held them incommunicado, sometimes for several months. That situation no longer prevailed, and a detainee had access to a lawyer and to visits from family members from the moment of his arrest.

11. In dealing with section VII (f) of the list of issues, he said that article 129 of the Panamanian Penal Code required the State to pay civil damages where the defendant succeeded in obtaining the general dismissal of proceedings after having undergone more than one year of pre-trial detention. Article 9 (5) of the Covenant, however, referred to something else: the enforceable right to compensation. It made no distinction as to the length of detention, merely that it had to be unlawful, and did not specify from whom compensation was due. There was not necessarily a contradiction between article 129 of the Penal Code and article 9 (5) of the Covenant; they complemented one another. Article 1645 of the Panamanian Civil Code, however, dealing with the civil liability of the State, provided a very restrictive ruling according to which the State was liable for damages only when a special agent had been involved. That ruling had been subject to considerable interpretation in the Supreme Court of Justice over a number of years, to the effect that the State was not liable for damages except when acting through a special agent, and that a prosecutor, a judge or any other official unlawfully detaining an individual clearly was not a special agent. Thus, although the provisions of the Panamanian Constitution and the Covenant worked in harmony,

/...

it was impossible for someone detained for one year or less to obtain compensation from the State. That would require a revision of the Civil Code permitting the State to be sued and to be legally obliged to pay damages to a person in the circumstances envisaged in the Penal Code and the Covenant.

Right to a fair trial (articles 14 and 15 of the Covenant) (section VIII of the list of issues)

12. The CHAIRMAN read out section VIII of the list of issues concerning the second periodic report of Panama, namely: (a) clarification of the provisions in article 43 of the Panamanian Constitution allowing for laws to have retroactive effect, *inter alia*, for reasons of "public order or social interest"; (b) the terms of Cabinet Decree No. 17 of 24 January 1990 which reformed and repealed the provisions suspending the requirements for admission to the judicial profession; (c) measures taken to safeguard the independence of the judiciary and the Public Prosecutor's Office, and how extensive were the reforms affecting the criminal investigation department and the Public Prosecutor's Office; (d) developments regarding the bill dealing with the prison system; (e) the effectiveness in practice of constitutional and legal guarantees concerning the independence of magistrates and judges in the exercise of their functions; and (f) information concerning the organization and functioning of the Bar in Panama.

13. Mr. CRUZ (Panama), referring to section VIII (a), said that article 43 of the Panamanian Constitution stated that laws had no retroactive effect, except those of public order or social interest when such was expressed therein. The article also stated that in criminal matters the law favourable to the accused always had preference and retroactivity, even though the judgement might have become final. The 1946 Constitution had stated merely that laws had no retroactive effect, except those of public order or social interest; the phrase "when such is expressed therein" had been inserted in the 1972 Constitution. The legislative branch had been passing laws which were clearly not of public order or social interest but where the phrase "this law relates to public order or social interest" was added, thereby rendering the law retroactive. Previous Governments had abused the phrase on numerous occasions, and he hoped that in any future reform of the Constitution there would be an opportunity to remove the words "when such is expressed therein" from article 43.

14. With regard to section VIII (b) of the list of issues, some background information was required. All Panama's Constitutions had established that judges, magistrates and prosecutors could not be dismissed except under the conditions prescribed by law, and that the judiciary was to be governed by what was known as the *carrera judicial*, the requirements for admission in the judicial profession. In 1969, the military Government had issued a Cabinet Decree suspending most of the important provisions of the 1963 Act on the requirements for admission to the judicial profession but had not repealed the Act itself. That anomaly had persisted for more than 20 years, until the

(Mr. Cruz, Panama)

adoption in 1987 of the current Judicial Code stipulating that the requirements for admission to the profession were to enter into force as soon as rules governing those requirements were adopted by the Judicial Council. Under the previous regime, however, the Supreme Court had done little or nothing to adopt such rules. Under the new Government, the Supreme Court and the Public Prosecutor's Office had worked intensively on a set of draft Rules on the Requirements for Admission to the Judicial Profession. The draft was now being considered by the Judicial Council, a body composed of three Supreme Court judges, the Attorney-General, the Solicitor-General and the President of the Bar (the latter having been made a member of the Judicial Council under new regulations recently passed by the Government). The Judicial Council was expected to adopt the the draft Rules by the end of the year. Their adoption would be a key factor in the administration of justice in Panama, for they were fundamental to the independence of the judiciary.

15. Under the previous regime, judicial appointments had been made without regard to the requirements for admission to the judicial profession. Cabinet Decree No. 17 of 1990 (para. 9 (d) of CCPR/C/42/Add.11) had repealed or amended the previous Government's provisions suspending those requirements, stipulating essentially that only those persons who met the standards of the forthcoming Rules on the Requirements for Admission to the Judicial Profession could hold judicial office.

16. He hoped that the foregoing also served to answer sections VIII (c) and (e) of the list of issues. The independence of the judiciary and of the Public Prosecutor's Office was fundamental. It was a positive reflection of the independence of the current incumbents that they had come under heavy criticism, widely reported in the Panamanian press, by certain sectors of the present Government, for decisions that had allegedly favoured the opposition. Indeed, opinion polls showed that the Attorney-General was the most unpopular official in the country, and there had been calls for his resignation. Justice, however, was a matter of upholding the Constitution and the laws, and not a matter of popularity with either the Government or the people.

17. As to the recent reforms referred to in section VIII (c), the former criminal investigation department had been reorganized as the judicial police department. Its mandate remained that of conducting preliminary police investigations of offences, transmitting findings to the Public Prosecutor's Office and working with the Office in the final investigations. The criminal investigation department had been an arm of the Panamanian Defence Forces, so that the Public Prosecutor's Office had in effect been subordinate to the army. That anomaly had now been eliminated. However, the new judicial police department had, in the past 14 months, come to be seen as overly dependent on the executive branch, and the Legislative Assembly was expected to adopt a law making the department accountable only to the Public Prosecutor's Office and the judiciary. In the first few months of the present Government, many undesirable members of the criminal investigation department had been weeded out, and that process was continuing. The Director and Assistant Director of

/...

the new judicial police department were two distinguished Panamanian lawyers, having replaced a member of the Defence Forces and an army-trained official.

18. As for the reforms carried out in the Public Prosecutor's Office, individuals who had been instrumental in promoting repression had been dismissed. The reforms were in their final phase with the dismissal of certain prosecutors on the basis of incriminating information, and the appointment of their replacements.

19. With regard to section VIII (d) of the list of issues, the prison system was, in theory, governed by article 28 of the Constitution, which provided that the prison system must be based on the principles of security, rehabilitation and social protection and that measures harmful to the physical, mental or moral integrity of detainees were prohibited. In practice, however, that was not the case. A bill dealing with the prison system had been drafted and was currently being considered by the legislative branch. Its early adoption was expected, which meant that the Constitution would no longer remain a dead letter in that respect.

20. With reference to section VIII (f) of the list of issues, the Bar in Panama was an association of legal professionals which acted with juridical personality conferred by the Ministry of the Interior and Justice as a non-profit organization governed by the Civil Code. About 3,500 lawyers were registered with the Bar but fewer than that number were actually practising, while many practising lawyers were not registered. The Bar had a chapter in each of the country's nine provinces, among the most active of which were the chapters in Chiriquí, Colón and Atlántico.

21. Under the military dictatorship, the Bar had been totally subservient and had lost all credibility. When the new Government had taken power, the leadership of the Bar had resigned and a new Director had been elected. In July, highly contested elections would be held for the governing body of the Bar. The Bar had recently been a critical factor in the development of new legislation. It had acted independently, at times supporting and at times opposing the Government. It had, for instance, severely criticized the draft Legal Assistance Treaty to be negotiated with the United States. Although the Bar should in theory be apolitical, that was difficult to achieve in practice, and some lawyers actively supported political parties.

22. Mr. SERRANO CALDERA thanked the representative of Panama for filling in many gaps and giving a coherent picture of how the issues raised under articles 8, 9, 14 and 15 of the Covenant applied to Panama.

23. He remained unconvinced, however, that there was no incompatibility between article 33 of Panama's Constitution and article 9 (1) of the Covenant (section VII (b) of the list of issues), because article 33 allowed the application of penalties without prior trial. The same stipulation also violated the due process provisions of article 14 of the Covenant.

/...

(Mr. Serrano Caldera)

24. Regarding section VII (f) of the list of issues, he did not see why article 9 (5) of the Covenant could not be invoked directly in cases not covered by article 129 of the Penal Code or precluded by other legislation. He wondered whether it ever had been invoked and what the outcome had been.

25. The provision in article 43 of the Constitution that laws could be retroactive for reasons of public order or social interest (section VIII (a) of the list of issues) continued to worry him: it violated the universal principle of non-retroactivity of legislation and created various legal uncertainties, and the same legal provision that invoked public order and social interest stipulated retroactivity. At the very least, the legislative branch should consider passing an act that explicitly defined the public order and social interest in question.

26. He would also like to know what happened when the Supreme Court declared a law unconstitutional. Was the law automatically repealed or was it simply declared inapplicable in the case at issue?

27. Article 203 of the Constitution appeared to empower the Supreme Court to replace the provisions of a law, repealed by a ruling of unconstitutionality, with new ones. He asked what type of provision could be repealed and replaced in that way, and what was the source of the Court's power to do so. Such a power appeared to turn the Court into a legislative body, and was very unusual in any system of law with which he was familiar.

28. As article 204 of the Constitution stated that a writ of unconstitutionality could not be admitted against judgements of the Supreme Court of Justice or its Chambers, an exclusive exception seemed to be made for Supreme Court judgements. The rulings of judges and courts could normally be appealed against, if not in the Appeals Court, the normal vertical process, then through the less usual constitutional route, and he therefore wished to know whether the judgements of the Supreme Court and its Chambers could in fact be challenged through a writ of unconstitutionality or were immune.

29. Mrs. HIGGINS, commenting on section VII (b) of the list of issues, said that she had noted the 10-day limit within which the initial deprivation of liberty could take place, and the 1-year limit in the case of matters being dealt with under the Defence Forces Act, but wished the representative of Panama to know that there was no provision for an exception relating to defence issues which would make that acceptable in the light of article 9 (1) of the Covenant. Panama was a party to the Optional Protocol, under which a case had already been decided indicating that in the event of detention under military circumstances as envisaged in article 33, the proper guarantees of article 9 of the Covenant were still required for periods far shorter than those practised in Panama. If there was a deprivation of liberty for reasons of military discipline and control, of a duration comparable to that which might occur for ordinary criminal offences, then there was a requirement of

/...

(Mrs. Higgins)

access to an impartial tribunal before such measures could be ordered. With reference to the reply given to section VII (d) that Panamanian law did not distinguish between remand in custody and detention pending trial, she pointed out that article 9 (3) of the Covenant established the twin entitlements to be brought promptly before a judge and to trial within a reasonable time.

30. Article 208 of the Constitution provided that magistrates and judges could not be discharged or suspended except under the conditions prescribed by law. She had no sense of what such conditions were, and whether they were such as to remove any reluctance by judges to act independently.

31. Mr. PRADO VALLEJO said that the answers given made it appear indispensable that Panama's domestic legislation be brought into line with the Covenant. That was the only way in which States could fulfil their obligations under article 2, which imposed upon them the duty to adopt such legislative or other measures as might be necessary to give effect to the rights recognized in the Covenant. In the case of Panama, it appeared that there was also a need for juridical reform, both in the Constitution and in the laws.

32. The representative of Panama had informed the Committee that the Covenant formed part of Panamanian domestic law. However, according to the Civil Code, Panamanian citizens could not obtain compensation for unlawful arrest or detention, which appeared to indicate a difficulty in putting article 9 (5) of the Covenant into effect.

33. He asked the representative of Panama to tell the Committee how many political prisoners were currently being held. He was raising the question both in the light of the very praiseworthy desire for national reconciliation and because, during a recent visit to Panama, he had been handed a long list of political prisoners or persons subject to political persecution. He would pass the list on to the representative of Panama so that he could comment on the situation with regard to political prisoners in Panama.

34. Similarly, in December 1990 a number of individuals had been arrested for demonstrating against the Government. They had been accused of infringing public order, but in fact theirs was a purely political situation. They had been arrested pursuant to the prevailing decree which banned demonstrations against the Government or those constituting an attack on public order or democracy. Such a broad provision banned even peaceful demonstrations. People arrested for exercising their legitimate right to dissent were political prisoners. Since such a decree ran counter to the Covenant, could it be repealed?

35. He also wished to know of the possibilities for political exiles to return to Panama. Some had already done so, and in a situation of national reconciliation it was obviously desirable that all who had fled for political reasons should be allowed to return to Panama and their families.

/...

(Mr. Prado Vallejo)

36. A related point, although one not specific to Panama alone, was the state of the prisons. There were prisons in Panama which were terribly dilapidated and drastically overcrowded. At the same time, people were being detained without trial for far longer than the possible duration of their sentence. While the problem could be attributed in part to the restructuring of the judicial system, it had to be addressed urgently. As of 30 June 1990, there had apparently been 3,224 detainees in all of Panama's prisons, of whom only 20 per cent had been tried and sentenced.

37. As a result of domestic and social problems in Panama, there had been a wave of crime, with 17,000 new criminal charges, for example, brought in nine months in 1990. More recently, 736 people had been arrested as a result of a public protest, although no legal order had been given for their imprisonment. The large numbers of detainees were overloading the system and preventing a final disposition from being made. Efforts must be made to resolve the situation, and he believed that the Attorney-General was well disposed to make real reforms. He wished to stress that arbitrary or unduly lengthy detention, and detention without trial or in the type of prison conditions prevailing in Panama, infringed the rights enshrined in the Covenant.

38. On the other hand, he wished to express his satisfaction at the reforms the Attorney-General had made in the criminal investigation department. He also welcomed the abolition of two types of irregular judges who had operated outside the normal judicial system and whose activities had given rise to considerable dissatisfaction.

39. Mr. WENNERGREN, recalling that the response to section VII (c) had been that there was no detention for reasons other than crimes, asked about the situation with regard to persons under the influence of drugs or alcohol, or those who were too mentally ill to take care of themselves. Was there no possibility of detention to help them?

40. Secondly, he had a concern about the independence of the judiciary. The Constitution stated that magistrates and judges were independent in the performance of their functions, but it was difficult to find any safeguards in the Constitution for that independence. He had the impression that judges and magistrates had suffered a variety of threats under the Noriega regime, and wished to know whether steps were envisaged to strengthen their independence, and whether it was not felt that such independence should be safeguarded in the Constitution rather than in laws.

41. Mr. ANDO observed, firstly, that article 33 (1) of the Constitution, which stated that officials might arrest anyone who insulted them or was in contempt of their authority, was so loosely worded as to entail a serious risk of abuse. Secondly, with respect to article 43, and while taking into account the clarifications given by the representative of Panama, he had grave concerns about applying a criminal law retroactively.

/...

42. Turning to paragraph 19 of the addendum to the second periodic report (CCPR/C/42/Add.11), he noted that reducing the number of high court judges required to pronounce final judgements might well have the desired effect of speeding up the judicial process. However, he wondered whether it might also bring other less desirable effects in its wake, and sought further information on the effects which the reduction had had.

43. Mr. MAVROMMATIS said that if article 33 (1) of the Constitution was intended to cover contempt of court, it was far too loosely written. As currently worded, it applied to every public official from a policeman to a messenger. If it was intended to apply specifically to judges, there were other places in the Constitution where the issue could be better handled. He hoped that his comment would help the Panamanians in the process of constitutional reform which they had already started.

44. Similarly, he felt that the provision relating to the powers of chiefs of public forces to arrest their subordinates could be better handled under ordinary criminal law or the military code, with specific safeguards.

45. On the question of detention for reasons other than crimes, his recollection differed from Mr. Wennergren's. He thought the Committee had been told that there was still detention for reasons other than crimes, although the law concerned had been much criticized and there were plans to repeal it. He sought information on the specific matters for which detention could be enforced under that law.

46. He felt that safeguards for the independence of the judiciary should be entrenched in the Constitution, on the basis of traditional ways of ensuring such protection: security of tenure, non-removal except by an independent body, and so on. Lastly, he hoped that in the process of weeding out former members of the Noriega regime from any present positions of authority, due process was being observed in order to avoid any excesses.

47. Mr. CRUZ (Panama), commenting on some of the statements made by members of the Committee, said that it was difficult at the present time to establish the precedence of the Covenant over the Constitution in Panama because there was a division of opinion there, as in many countries, between what might be called the internationalists, who wished to see international instruments given priority, and constitutionalists who believed that national constitutions should take precedence. He did not think that the forthcoming constitutional reform in Panama would help to solve that problem, as it would focus primarily on the elimination of militarism. In any case, before the problem could be solved it was necessary to convince the constitutionalists of the desirability of bringing the Constitution into line with the Covenant. Both the Inter-American Commission on Human Rights and the Human Rights Committee could help in that respect by making greater efforts to disseminate information about the Covenant and the arguments for giving it precedence over domestic legislation.

(Mr. Cruz, Panama)

48. Referring to the comments made on article 33 of the Constitution, he said he did not really wish to defend the article, but wished to emphasize that it was not often applied and that the risk of its abuse seemed remote. For those reasons, he felt that other, more urgent, problems must be given higher priority.

49. Responding to Mr. Ando's question, he noted that it was not the number of judges that had been decreased but the number of those whose signature was required for the judicial actions in question.

50. Turning to other questions, he said that the Supreme Court of Justice had yet to rule on the question of the supremacy of the Covenant. He agreed that that should be done, but felt, as he had said earlier, that an effort must first be made to convince his country's legal experts that the Covenant should in fact take precedence.

51. A question had been asked about the number of political prisoners in Panama. There were no such prisoners in Panama in the sense of persons imprisoned for their political views. People might be imprisoned for crimes such as sedition, which could in a sense be called political crimes but were nevertheless crimes under the Penal Code. There were some prisoners in Panama who claimed that they had been imprisoned for their political views, but that claim had been put forward in an attempt to influence public opinion against the present Government.

52. The figures cited by Mr. Prado Vallejo concerning the number of persons arrested and held without trial were erroneous. Some arrests had been made during the incident referred to by Mr. Prado Vallejo, but none of those arrested had been detained for more than 24 hours.

53. It was true that Act No. 112 of 1974 had yet to be repealed. He was in favour of its repeal and hoped that that would happen. He wished to point out, however, that the Act covered only minor offences for which the most severe penalty was one year's imprisonment; other crimes were covered by the Penal Code.

54. Replying to the question raised by Mr. Serrano Caldera, he said that court judgements were not open to writs of unconstitutionality, which applied only to legal provisions. Court judgements were, however, subject to amparo, which was the specific remedy for infringements of individual freedoms.

55. In connection with article 203 of the Constitution, he explained that rulings of unconstitutionality repealed specific laws but did not restore pre-existing situations. That could, however, be accomplished through other legal procedures under article 203. It was possible for the courts to repeal a specific provision or clause of a law and replace it by another where such action was required, for example, to preserve the intelligibility of a text. That power was, however, rarely used.

/...

56. Clarifying a remark he had made at an earlier meeting, he said that during the decades of dictatorship it had been the almost unvarying practice of the courts either to refuse to receive writs of amparo or to reject them. In the case of writs of habeas corpus brought against actions ordered by the higher courts or persons influential in the regime, those writs had simply been denied. That was why he had expressed satisfaction that some of the detentions he himself had ordered had been declared unlawful; it was an indication that the desire to protect individual rights now existed in the Supreme Court of Justice.

57. Replying to Mr. Wennergren, he said that it was possible to detain persons such as the insane or those under the influence of drugs in order to safeguard their lives or health.

58. Mr. PRADO VALLEJO, speaking in clarification of his earlier question, said he had been informed that a law was to be adopted abolishing the two types of magistrates to which he had referred. He hoped that was in fact the case.

59. His statement about the large number of detentions that had followed the incident in 1990 was confirmed by a report on human rights issued by the State Department of the United States, which indicated that 736 people had been arrested without a warrant on the night of the incident, of whom 463 had been released and 263 were still being held.

60. Mr. CRUZ (Panama) said that the State Department report was incorrect. He wished to add three further comments. A reference had been made to exiles from Panama seeking asylum in other countries. There were no exiles from Panama, as no one had been expelled by the new Government. There were people who had left the country, but they had done so in order to avoid prosecution for crimes and their claim that they were seeking political asylum was spurious. The apparent acceptance of their claims was disturbing because it contributed to the efforts being made to discredit Panama's new Government.

61. In connection with the statement that Panama's prisons were full of people detained without trial, he pointed out that that had been the situation for decades and one common to a number of Central American countries. The Government was concerned about the situation and was trying both to reduce the delays in bringing accused persons to trial and to replace pre-trial detention by other measures. Its efforts, however, were being hampered by a lack of resources.

62. The same was true of prison conditions in general. The Government had taken extraordinary measures to relieve the overcrowding in prisons, but the problems involved had accumulated over 20 or more years and could not be solved quickly. The idea that they could be was dangerous, because it lent

/...

(Mr. Cruz, Panama)

support to those in Panama who wanted to return to a dictatorship. The Government recognized that much remained to be done in that area, as in other human rights areas, and intended to do it, with the help of all its friends around the world.

The meeting rose at 1.05 p.m.

UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1054
11 April 1991

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE 1054th MEETING

Held at Headquarters, New York,
on Friday, 5 April 1991, at 3 p.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Second periodic report of Panama (*continued*)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued after the end of the session.

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Panama (continued) (CCPR/C/42/Add.7 and Add.11)

1. At the invitation of the Chairman, Mr. Cruz, Ms. de León, Ms. Pardo and Mr. Pereira (Panama) took places at the Committee table.

Freedom of movement and expulsion of aliens (articles 12 and 13 of the Covenant) (section IX of the list of issues)

Right to privacy (article 17 of the Covenant) (section X of the list of issues)

Freedom of religion and expression: prohibition of propaganda for war and incitement to national, racial or religious hatred (articles 18, 19 and 20 of the Covenant) (section XI of the list of issues)

Freedom of assembly and association (articles 21, 22 and 25 of the Covenant) (section XII of the list of issues)

Protection of family and children (articles 23 and 24 of the Covenant) (section XIII of the list of issues)

2. The CHAIRMAN read out section IX of the list of issues concerning the second periodic report of Panama, regarding: (a) the distinction between expulsion and deportation; (b) whether an appeal against an expulsion order had suspensive effect; and (c) the compatibility with article 13 of the Covenant of the denial of the possibility of appeal from expulsion orders issued for reasons of health and public policy.

3. He read out section X of the list of issues, regarding information concerning the law and practice relating to implementation of article 17 of the Covenant, taking into account the Committee's general comment No. 16 (32).

4. He then read out section XI of the list of issues, regarding:
(a) procedures for legal recognition and authorization of various religious denominations; how article 35 of the Constitution, providing for freedom of worship subject to respect for Christian morality and public order, affected such recognition, especially with regard to non-Christian religions;
(b) possible privileged treatment of the Roman Catholic Church in comparison with other churches or religious groups; (c) additional information concerning the practice of censorship in Panama and the effectiveness of legal guarantees relating to freedom of expression, particularly political dissent;
(d) functions of the National College of Journalists, and whether it was a government body or independent; whether a journalist must belong to the College in order to engage in the profession; what the College's procedures

/...

(The Chairman)

for admission to membership were; and whether any journalist had been denied admission to the National College of Journalists since its inception; and (e) outcome of the studies undertaken by the National Advisory Commission to review the regulations governing the mass media, and whether any regulations had been adopted on the basis of the Commission's report.

5. He went on to read out section XII of the list of issues, regarding: (a) information concerning the law and practice relating to the establishment and functioning of political parties and trade unions and any relevant restrictions, and whether any political parties had been banned since the consideration of the initial report; and (b) additional information concerning the law and practice relating to State involvement in financing political parties, pursuant to article 135 of the Constitution, and how equality of treatment in that respect of the various political parties was ensured.

6. Lastly, he read out section XIII of the list of issues, regarding: (a) whether the draft Family Code had been enacted, and, if so, what its main provisions were; (b) information concerning the activities and accomplishments of the Authority for the Child and the Family; (c) the practical measures taken to enhance the enjoyment of women of equal rights during marriage; and (d) any plans to remove the discriminatory provisions in respect of divorce contained in the Civil Code.

7. Ms. de LEON (Panama), referring to section IX (a), said that expulsion orders were used where foreigners who had met the requirements for entry into the country were found to be undesirable on various grounds, including that of national security. As indicated in the report, under the relevant legislation the Government could expel any alien present within its territory. Deportation orders applied where aliens had not complied with the requisite legal formalities for entry or had stayed beyond the period permitted by their visa.

8. With regard to section IX (b), an application for review of an expulsion order could be made to the authority issuing the order, and an application for appeal against an expulsion order could be made to a higher authority. Both applications would have suspensive effect. With regard to section IX (c), in addition to applications for review and appeal, the remedy of habeas corpus was available.

9. Mr. CRUZ (Panama), with reference to sections X and XI of the list of issues, said that the rights protected under article 17 of the Covenant were provided for under various articles of the Constitution. Interference with or attacks on the rights guaranteed under article 17 might arise in the context of freedom of expression, which could be exercised only with due regard to the protection afforded by the law against defamation and libel, with the consequential right to compensation. The legislation on freedom of expression was currently under review, in which connection the Committee's general comments would prove very valuable.

(Mr. Cruz, Panama)

10. Commenting on section XI (c), he said that during the military dictatorship not only had various legal measures been adopted to restrict freedom of expression, but a number of newspapers and radio stations had been closed. With the change of government the situation had altered completely, and those media which had been closed down or confiscated had been reopened and restored to their rightful owners. Various dissident groups now produced their own radio programmes, and freedom of expression had become firmly established.

11. With regard to section XI (d), the National College of Journalists had been formed during the latter years of the dictatorship, but had been denied legal recognition until the advent of the new Government. It was not necessary to be a member of the College in order to exercise the profession of journalism, and other professional associations existed. Admission to the National College of Journalists was open to all those engaged in the profession, and, so far as he was aware, no one had ever been denied membership.

12. With regard to section XI (e), the National Advisory Commission established to review the regulations governing the mass media had only recently presented its conclusions, which had already given rise to a wide-ranging debate. The bill which would ultimately go to the Assembly on the basis of the National Advisory Commission's conclusions would thus already have been subject to national debate prior to its consideration in the Assembly.

13. Mr. PEREIRA (Panama), with reference to section XII of the list of issues, said that the first elections in Panama had been held in 1980 to elect only a small percentage of the members of Parliament. That had been the first time political parties had participated in the political process in Panama. Subsequent elections had been held in 1984 and 1989 with fuller participation by political parties.

14. In order to be recognized as a political party, a grouping had to have a minimum support base of some 3.5 per cent of the electorate, corresponding to approximately 30,000 voters. Prior to the 1984 election application of electoral requirements had been so lax that a government-sponsored phoney party had been registered simply by culling names from telephone directories. In the 1989 election almost all the parties on which the Government had been based had disappeared owing to their failure to attract the necessary minimum percentage of votes cast.

15. No political parties had in fact been banned since the Committee had considered Panama's initial report. Six political parties currently met the legal requirements to be recognized as such and participate in the political process. In that connection the law required that political parties possess a democratic internal structure, with decisions taken by voting. In the absence of complaints about the conduct of a party's affairs, the Government would not

/...

normally intervene, but it did have enforcement means, in the form of the Electoral Tribunal and Electoral Prosecutor, at its disposal.

16. The legal status of trade unions was protected under the Constitution and the Labour Code. Trade union rights applied to private enterprises but not to public sector organizations. Following the military coup in 1968, some private enterprises had been transferred to the public sector through nationalization. As a result an anomalous situation had arisen, since the Government had allowed the trade unions in those enterprises to remain in existence in what had become State enterprises. That had led to a belief on the part of other State employees that they, too, should be allowed trade union rights. The situation was particularly striking in the banking industry, where employees of the State banking sector lacked protection under the Labour Code which was available to employees in private banks. Clearly, a problem of social justice existed which demanded a political solution.

17. The financing of political parties was governed by article 135 of the Constitution, but that article had remained without effect as a result of failure to agree on provisions to translate it into practice. Accordingly, it was not possible to answer the question in section XII (b) concerning equality with regard to the financing of political parties. In that connection he asked members of the Committee if they would make available to the Panamanian Government details of their relevant domestic legislation to assist Panama in devising its own norms.

18. Ms. PARDO (Panama), referring to section XIII (a), said that the draft Family Code was currently under review. The Code provided protection in all areas relating to the family. With regard to section (b), the functions of the Authority for the Child and the Family had been transferred to the Social Welfare Department of the Ministry of Labour. As indicated in earlier statements by her delegation, that Department was devising an ambitious plan in various spheres of concern to the child and the family.

19. With regard to sections XIII (c) and (d), discrimination on the basis of sex was unconstitutional. Further, the Civil Code treated married men and women on an equal basis. None the less there were cultural problems, and there was some way to go before the protection of women's rights could be fully assured. In that connection, the Social Welfare Department was formulating an education campaign to make women aware of their legal rights. All discriminatory provisions in respect of divorce had been abolished, and recent legislation gave women the right to keep their own surname on marriage.

20. Mr. AGUILAR asked which illnesses could constitute grounds for the expulsion of aliens for reasons of health.

21. Mr. SADI said that Panama's legislative provisions concerning the expulsion of aliens were laid down in broad terms which did not seem to provide adequate safeguards against arbitrary expulsions. Perhaps the

/...

(Mr. Sadi)

Government would consider setting forth such regulations in greater detail and including a right of appeal, in accordance with the requirements of the Covenant. Given the fact that deportation orders could be appealed, he asked whether the Government could arbitrarily decide to resort to expulsion rather than deportation. With respect to elections, he asked whether the boundaries of electoral districts were drawn in a manner that ensured equitable representation of different political parties in the Government. Details on the regulations governing the formation of political parties would also be useful, in view of the prohibition of incitement to discrimination or violence contained in article 20 (2) of the Covenant. With respect to the protection of children, he wondered whether Panama had considered ratifying the Convention on the Rights of the Child. In addition, he expressed concern about the indication in paragraph 46 of the report (CCPR/C/42/Add.7) that girls became legally entitled to marry at the age of 12. He asked whether that provision of the Panamanian Civil Code had been amended, since it appeared to violate the spirit of the Covenant. He also wondered whether Panamanian law provided safeguards against child abuse.

22. Mr. WENNERGREN noted that the right to vote was characterized as a duty in the Panamanian Constitution, and asked how the requirement to vote was enforced and whether exceptions were made, in accordance with article 18 (2) of the Covenant, in cases where participation in elections was contrary to religious beliefs. Article 19 (2) of the Covenant, which provided for freedom of information, implied that Governments should operate under a policy of openness. He wondered whether such openness was the exception or the rule in Panama.

23. Mrs. HIGGINS said, with respect to the question of unionization in the public and banking sectors, that article 22 of the Covenant made no distinction between the public and private sectors in prohibiting unnecessary restrictions on the right to form and join trade unions. Moreover, none of the conditions under which restrictions were permissible would apply to the banking sector.

24. She asked for confirmation of the report that government workers who had participated in a demonstration on 5 December 1990 had been dismissed from their posts by virtue of Law No. 25 of 1990. She also asked whether the universities' financial dependence on the Government impaired their freedom to hire and dismiss staff members, and in particular whether State funding was ever withheld from universities in order to secure the employment or dismissal of certain persons.

25. Mr. PRADO VALLEJO, noting that Panama's legislation contained provisions which prohibited all types of peaceful demonstrations and permitted the dismissal of workers who participated in such demonstrations, recalled that in 1990, there had been protests in Panama concerning the Government's tapping of private telephone lines, and requested clarification of the Government's public declaration that its actions had been prompted by security

/...

(Mr. Prado Vallejo)

considerations. The rights guaranteed in the Covenant had also been affected by the Government's cancellation of the licences for four radio frequencies in 1990; he asked for comments on that subject.

26. Although Panama's legislation recognized the right to strike, it was discriminatory in that it did not recognize that right for certain categories of workers, such as bank employees, United States employees and Canal Zone workers. He wondered whether there was any possibility that those exceptions would be eliminated. With respect to freedom of association, he noted that workers who had participated in the strike of December 1990 were not allowed to belong to trade unions. He, too, was concerned about Law No. 25 of 1990, whose constitutionality was currently under review by Panama's Supreme Court, and asked whether any conclusions had been reached.

27. Mr. ANDO noted that article 13 of the Covenant provided that the expulsion of aliens was permissible only on the grounds of compelling reasons of national security, and asked whether that criterion was strictly applied in Panama. He also requested clarification of paragraph 47 of the report, which indicated that the State did not make allowances to large families.

28. Mr. PEREIRA (Panama), referring to Mr. Sadi's question regarding elections, said that Panama's electoral process comprised two coexisting electoral systems. In districts with a population of between 20,000 and 30,000 persons which had traditionally supported a particular political party, only the party that won the elections was represented in the Government. However, in districts with a population of over 40,000, there was a system of proportional representation which ensured that minority parties were also represented in the Government, provided they won a certain percentage of the vote. Approximately half of Panama's population lived in areas where proportional representation was in effect.

29. With respect to unions, the Constitution did not distinguish between public and private employment in its recognition of the right to form and join trade unions; it was the Labour Code which restricted unionization to private enterprises. The Constitution also recognized the right of all employees to strike, providing only that the law could, if necessary, impose special restrictions on the right to strike in the case of public service employees.

30. In reply to Mrs. Higgins, he said that the events of 5 December 1990 had concerned the participation of some union leaders in an attempted coup d'état organized by a former military leader. There was no general policy of dismissing public employees from their posts for participating in political activities that criticized the Government.

31. Concerns had also been voiced with respect to allegations of illegal detentions by the Panamanian police force following a government-authorized search for arms in certain residential areas of Panama City. On 9 March 1990, 736 persons had been arrested, 263 of whom had been charged with serious

/...

(Mr. Pereira, Panama)

crimes such as murder, robbery, assault and drug trafficking; similar operations had taken place on 13 March and 6 April 1990, which had also resulted in criminal charges. There was no evidence that any detainees or other persons affected by the operations had questioned their legality in court. It should be remembered that under the previous Government, the security forces had indiscriminately distributed thousands of arms throughout the capital. The security situation in Panama, therefore, was such that extraordinary measures were necessary to find and disarm persons who possessed weapons illegally. The Government's fundamental concern was to promote democracy and to protect human rights in accordance with the Covenant.

32. Mr. CRUZ (Panama), while confirming that there were no constitutional obstacles to the participation of public employees in unions and strikes, pointed out that some Panamanian lawyers felt that the Constitution's provisions concerning unions and strikes applied only to employees of private enterprises because they did not appear in the section of the Constitution which dealt specifically with civil servants. According to that interpretation, the question of compliance with the Covenant in that respect was not a legal but a constitutional issue.

33. With respect to freedom of expression, a decree enacted by the former military Government in 1969 had established censorship boards, ostensibly for the purpose of reviewing films to determine which categories of persons should be allowed to view them. However, there had been cases in which entire editions of certain books had been withdrawn from stores by virtue of that decree, on the grounds that they constituted a threat to morals or to public order. The decree had therefore been strongly criticized, and he believed that President Endara should take prompt action to introduce legislation which would prevent such abuses.

34. Law No. 25 had been adopted by the Legislative Assembly after an abortive coup d'état in December 1990 which had been led by a retired military officer who had escaped from detention. The public service had initiated an investigation to determine whether there had been any involvement of State employees in the plot, but no such collusion had so far been established, although the President of the Republic and the Attorney-General held divergent views on that question. Law No. 25 was currently under review in the Supreme Court on the grounds of its alleged imcompatibility with the Constitution.

35. The Constitution incorporated guarantees of the privacy of the individual. In the case of a criminal investigation, however, police could be authorized to carry out phone-tapping operations. Such authorizations might, of course, lead to a conflict between domestic law and the provisions of the Covenant on the right to privacy.

36. With regard to the cancellation of four radio frequencies by the Government, which had been mentioned by Mr. Prado Vallejo, he said that, while

/...

(Mr. Cruz, Panama)

he was unable to provide further clarification on that specific issue, the whole question of regulations for the mass media was under consideration by the Legislative Assembly with a view to the introduction of new legislation.

37. In connection with the right to strike, he pointed out that the Canal Zone was within the jurisdiction of the United States, and that Panamanian labour legislation would accordingly not apply in the Zone.

38. Ms. de LEON (Panama), referring to the question of expulsion of aliens on grounds of the need to protect public health, said that such expulsions were rare, and that in each case a justification had to be provided. Although the individual concerned could appeal only if the remedy of *amparo* (enforcement of constitutional rights) could be invoked to suspend the expulsion order, he or she was entitled to legal representation in any hearing before the authorities issuing the order. In recent months the only expulsion order had related to a person suffering from cholera.

39. Panama had recently incorporated the provisions of the Convention on the Rights of the Child into its domestic legislation, and was in the process of preparing a draft Family Code. Any suggestions from the Committee regarding suitable provisions in that regard would be most welcome. Minors in Panama were protected by the Minors' Guardianship Tribunal, a special court for children established in 1958. In general, however, efforts to prevent child abuse and ill-treatment were hampered by the lack of funds resulting from the country's continuing economic difficulties.

40. Mr. PEREIRA (Panama) referring to the comments which had been made regarding the minimum age for marriage, said that the problem was not the statutory age but rather the fact that girls even younger than 14 years were becoming pregnant. That was a widespread phenomenon which was of serious concern to the authorities.

41. The CHAIRMAN invited the members of the Committee to make their general observations on the second periodic report of Panama.

42. Mr. PRADO VALLEJO welcomed the objectivity shown by the Panamanian delegation in its replies to questions which, however searching, were intended to foster a spirit of constructive dialogue between the Committee and the new Government of Panama.

43. Latin Americans deplored the fact that the former regime had been brought to an end by means of an invasion which had entailed large-scale suffering and dislocation, and they sympathized with the view that those who had been injured or who had lost their homes should be compensated. At the same time, it was essential that, since the chaotic conditions of the immediate post-invasion period had given way to a more stable situation, efforts should now be made to repeal discriminatory legislation, such as Law No. 25, which contravened the rights affirmed by the Covenant, and to expedite judicial proceedings against persons held in custody.

/...

(Mr. Prado Vallejo)

44. In conclusion, he expressed the hope that a further report from Panama would be forthcoming in the near future, and that it would allay some of the concerns voiced by members of the Committee during the discussions.

45. Mr. EL-SHAFEI noted with approval the legislative changes that had been taking place in Panama to eliminate conflicts between Panamanian laws and the provisions of the Covenant, but drew attention to those discrepancies, particularly with regard to the powers conferred on the security forces in a state of emergency. Although the reasoning behind such measures could be understood in the light of the difficult times the country had recently experienced, it was to be hoped that such abuses as the detention of trade unionists and leaders of political parties would soon cease, and that the conditions under which the detainees were held would be improved.

46. With regard to investigative procedures, he said that it might be helpful if training programmes for the police force were established in order to familiarize the police with the procedures set out in such instruments as the Code of Conduct for Law Enforcement Officials.

47. Mr. MAVROMMATIS agreed with Mr. Prado Vallejo that a new report reflecting the changing circumstances in Panama was necessary, particularly in view of the unbalanced nature of the previous report, which had been submitted by a dictatorial regime which had acceded to the Covenant for reasons best known to itself. He hoped that the new Government of Panama would find the exchange of views in the Committee helpful in compiling such a follow-up report.

48. Mr. ANDO expressed his appreciation to the Panamanian delegation, whose input had largely compensated for the brevity of its second periodic report. While the Government was, indeed, in a very difficult position, he urged it to make every effort to guarantee human rights without relying on outside assistance. Panama's own initiatives in the field of human rights would be particularly important when sovereignty over the Panama Canal Zone was restored.

49. The expulsion procedure and, in particular, the fate and treatment of Chinese nationals who were in Panama illegally, still gave cause for concern. Referring to the protection of minors and children, he said that the age for marriage was too low. The review of Panamanian law was a step in the right direction, but he underscored the need for full implementation of the provisions of the Covenant. Much remained to be done in that regard. In particular, the proper economic and social conditions for ensuring the long-term protection of human rights must be established.

50. Ms. CHANET commended the delegation on its presentation of a report it had not prepared and recognized that radical changes could not be expected to take place in 14 months. Noting that Panama was about to embark on major constitutional reforms, she expressed particular interest in the magistrature and the creation of a technical police force, which she hoped would come into

/...

(Ms. Chanet)

being promptly. She agreed with Mr. El-Shafei's remarks concerning a code of conduct for police officials. She was also pleased that prison reform would eliminate the problem of overcrowding.

51. Article 33 of the Panamanian Constitution was hardly compatible with articles 9 and 14 of the Covenant. A person could not be both judge and party to a trial. Referring to article 43 of the Constitution, she said that the circumstances under which a law concerning the public order could be retroactive were too vague. That article and article 102, which the delegation had indicated was the subject of controversy, should be repealed. The Committee did not yet have sufficient information to determine whether the policies of the new Government would result in the full implementation of the Covenant. She hoped that that would be more evident in the third periodic report.

52. Mrs. HIGGINS commended the Panamanian delegation for the extreme frankness with which it had replied to the Committee's questions and described the problems still confronting the country. For example, the delegation had indicated that the Covenant was not well known in Panama; that it was not always possible to award compensation for past violations; that the granting of compensation under the penal code would necessitate a revision of the civil code; that the Standard Minimum Rules for the Treatment of Prisoners had been disseminated only in a perfunctory manner; and that constitional texts, laws and even Supreme Court decisions were not always enforced.

53. However, genuine progress had been achieved, including the release of prisoners from military control; the conduct of new training programmes and seminars for the reintegration of prisoners in society; and the adoption of a new procedure for investigating police conduct, regulations on the use of firearms by police, and provisions to bring telephone tapping under judicial control. Issues which must still be addressed were, *inter alia*, the disturbing infant mortality rate; the restraints on trade and the exercise of professions by aliens; unionization and dissemination of the Covenant. She hoped that the delegation's exchange with the Committee would persuade Panamanian officials to incorporate the provisions of the Covenant into domestic legislation.

54. Mr. WENNERGREN expressed appreciation for the delegation's comprehensive, informative presentation, which had largely compensated for gaps in the written report. The exchange had helped to focus attention on developments in Panama designed to strengthen the rule of law and the protection of human rights and it had established a useful basis for the consideration of Panama's third periodic report.

55. Mr. LALLAH thanked the delegation for providing so much information on questions which had not been addressed by previous delegations. There was no basis for the debate concerning which should have primacy, international law or Constitutional law; a State was duty-bound to carry out obligations it had accepted under international law.

/...

(Mr. Lallah)

56. Earlier in the discussion, he had referred to insufficient public awareness of the Covenant and Optional Protocol in Panama. However, he had since learned that the Committee had received two communications under the Optional Protocol and that the Panamanian Government had been extremely cooperative in that regard.

57. He agreed with Mr. Mavrommatis that the judiciary must be institutionally and otherwise independent of the executive and legislative branches. Independence must be ensured in the system of appointments to the judiciary; salaries and conditions of service, such as tenure; and in the application of disciplinary measures, which, ideally, should be taken only in the gravest circumstances. Perhaps the third periodic report would provide an account of the measures taken to that end.

58. Mr. WAKO noted that the composition of the delegation itself was an indication of Panama's commitment to equality between men and women. The Attorney-General's presentation had indeed attested to the independence of the judiciary (section VIII (b) of the list of issues), for Mr. Cruz had openly disagreed with his Government, for example, with respect to the role of workers in abortive coup attempts.

59. He agreed with Mr. Lallah that a State party was duty-bound to abide by the obligations it had assumed under the Covenant, irrespective of its own constitutional provisions. However, he was encouraged by the Panamanian delegation's anxiousness to seek the Committee's advice on how best to implement a number of provisions of the Covenant.

60. He remained concerned about the rights of workers, and the use of force by the police and the army. Machinery for the investigation of police abuses must be strengthened and prison reforms must be put into effect. Much remained to be done to guarantee the independence of the judiciary and the bar, following the welcome repeal of the laws suspending the legal profession. He also remained concerned about the minimum age for marriage in Panama; the situation of the Chinese minority; measures to integrate the indigenous populations in the mainstream of national life; and the expulsion procedure. Recognizing that change could not take place immediately in a nation which was making a new beginning, he commended Panama on the steps it had already taken to ensure the protection of human rights.

61. Mr. AGUILAR also commended the Panamanian delegation on its candour, which made up for the brevity of the report submitted. As a national of Costa Rica, he had been painfully aware of the difficulties Panamanians had experienced under the previous regime when drug trafficking had been sanctioned at the highest level and human rights had been totally non-existent in Panama. At that time thousands of Panamanians had crossed the border into Costa Rica, fleeing prison or government persecution and numerous corpses had been found at the border, most notably that of Hugo Spadafora. It was perfectly understandable that most Panamanians should feel uncomfortable about the invasion of their country, even though it had ultimately brought about their liberation.

/...

(Mr. Aguilar)

62. The fervour with which Panama sought to protect human rights was unprecedented in a young Latin American democracy. Even so, regrettably, certain violations of the rights of members of the former regime were begin alleged. Reading from a letter from a citizens' group on constitutional reform, in which certain violations were described, he expressed the hope that the new Government would be broad-minded enough to deal with those cases. He was less concerned about discrepancies between Panamanian constitutional law and the provisions of the Covenant, convinced that laws adopted under duress or under orders from the military would be repealed in the near future.

63. The CHAIRMAN thanked the Panamanian delegation for its extremely constructive contribution to the dialogue and recognized that certain remaining problems were attributable to the transition to democracy after a long period of dictatorship. The Panamanian delegation's presentation had largely compensated for the inadequacy of the report and he hoped that the third periodic report would meet the Committee's guidelines. As the third periodic report had been due in June 1988, the Committee would set a new deadline.

64. Mr. CRUZ (Panama) reiterated that his delegation had wished to present a true picture of what remained to be done in Panama in terms of guaranteeing human rights. The delegation's exchange of views with the Committee had brought his country one step closer to attaining that objective. He expressed appreciation for the Committee's input and said that every effort would be made to elaborate a third periodic report which would comply with the Committee's reporting guidelines.

The meeting rose at 6.10 p.m.